



THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

**Black Economic Empowerment and Changes in Ownership and Control
in South Africa's Mining Industry**

Sixta Raphael Kilambo

**A thesis submitted in partial fulfilment of the requirements of the
Degree of**

DOCTOR OF PHILOSOPHY

At the

CENTRE OF AFRICAN STUDIES

UNIVERSITY OF EDINBURGH

July 2016

Abstract

This study investigates how white and foreign-owned mining companies have complied with the Mining and Petroleum Resources Development Act (MPRDA) and Mining Charter, the core of the Broad-Based Black Economic Empowerment (B-BBEE) policy in South Africa's mining industry. The Mining Charter demands that white and foreign-owned companies transfer 15 per cent equity to blacks by 2009, increasing to 26 per cent by 2014. It also demands 40 per cent black control and management of mining companies regardless of the shareholding that blacks own. The study used a sample of 72 mining companies to explore broad aspects; these include changes in equity ownership (company shareholding and mining assets) and in particular mining deals concluded by white and foreign-owned companies with blacks between 1990 and 2012. It also explored black representation on the board and management of mining companies and conducted interviews with 35 executives from 27 mining companies.

The study findings are that equity targets are low and reached only 7.4 per cent (R1.8trillion-£163billion) of the total market capitalisation of the Johannesburg Stock Exchange (JSE) as per 12 July 2011. However there is an emergence of large black owned-owned companies (those with 50 + 1 share) such as African Rainbow Nation, Exxaro, Shanduka Resources and Royal Bafokeng, empowered enterprises (25 +1 share) and a broad category of beneficiaries including consortiums, community shareholders and Employee Share Ownership groups which some hold small amount of shares (between 1-5 per cent). Most deals however were concluded by the Anglo American and BHP Billiton. Out of the 468 board members and 226 managers identified, black representation on the board and top management of white and foreign-owned companies was 25.9 and 18.5 respectively. In companies where blacks have majority shareholding board membership was 53.7 per cent and top management at 35.7per cent.

The study has highlighted impediments faced by blacks in the mining industry. They lack capital, some are in debts and others liquidated, use poor technology and face difficulties in accessing land and export markets. The first main argument of the study is that the impediments and lack of government support limits their success and survival in the industry. The second is that ownership structure determines control in the mining industry. The reasons are historical, as the industry's corporate structure was and is still concentrated, has cross shareholding, significant control of assets by financial institutions and families and low voting shares are conditions are used in empowerment mining deals. This is challenging to the attainment of the 40 per cent target of control and management demanded by the Charter.

The conclusion from this study is that the entire B-BBEE implementation process in the mining industry is controlled by the white and foreign-owned companies. They have a free hand in the choice of black-owned companies; which assets to have full ownership and which to offer shares or sell to

blacks; the type of shares they offer; the conditions to attach to the transactions; and the manner that they deal with their community partners. This situation arose mainly because blacks lack their own funds and face a host of impediments. Unless the government establishes institutions to guide and monitor implementation of its B-BBEE policy and puts in place support mechanisms for black entrepreneurs, black equity ownership and attainment of management and control of mining assets will remain limited.

Acknowledgements

In conceptualising and executing this study, I owe profound debt to a number of people who cannot all be mentioned. But first and foremost I would like to thank my supervisors Dr Thomas Molony and Dr Gerhard Anders. Tom accepted the supervisory role of the thesis, suggested extra literature, and provided constructive comments, continuous guidance and encouragements. From Tom, I learnt discipline, hard work and formalities and tactics of conducting research for a PHD thesis. It will be difficult for me to forget Dr Gerhard Anders for his expertise on research related to policy issues, and Dr Andrew Lawrence, my first supervisor, for his knowledge of black economic empowerment issues and his fast response to hurdles that I faced in obtaining my student visas.

In trying to understand issues that were unfamiliar and reach people, my gratitude are to Clive Knobe and Musa Budeda, for the enlightenment on mining expertise, Prof Kantor for his outstanding knowledge on South Africa's ownership and control structures. I also thank Julius Komba, Loice Alusala, Dr Chris Nshimbi and Prof S Maithufi for their constructive comments and heartedly given technical support. To Nkosinathi Ngwenya for accepting to be my research assistant and introducing me to the mining industry fraternity and this made data collection possible.

I will always appreciate the endurance of my sister Bernada Kilambo as I lost my three siblings in the course of study, my brothers Lucian Kilambo, an Edinburgh University alumna who would have been proud of me, Vitus Kilambo who was always excited with my academic achievement and my sister Maria Kilambo who always gave me motherly love. I appreciate the endurance of Isaya Kilambo, Raphael Kilambo, Ephraim Kilolelo, Hermes and Bernard Kuweta; Luki, Frida, Grace and Jane Njale; and Cassim Ligwala for keeping our homestead. I am also grateful to Kristina Kilambo, the twins Agnes and Angela Kilambo and Sixta Abdala, Lucian, Simon, Godwin and little twins Loveness and Lightness, who all missed me. I hope they appreciate education. I heartily thank my husband Prof Novatus Miti especially for financial support for the entire period of my study. Without him it would have been impossible!

I would also like to thank Steve Koch my Head of Department at the University of Pretoria for granting me study leave, my fellow PhD students and staff members at CAS.

My bright memories of Scotland are because of Ms Pat Bryden a Good Samaritan, a friend, who welcomed me in her cosy home at Canonmills, for the wonderful places we travelled, for the movies and talks and ideas we shared.

Lastly I thank the Almighty God.

Table of Contents

1	Introduction.....	1
1.1	Why Research BEE Equity Ownership and Control in South Africa's Mining Industry?	1
1.2	The Importance of Mining to the South African Economy	9
1.3	The Wrongs of Apartheid and the Roots of Social and Economic Imbalances.....	14
1.4	Black Economic Empowerment in South Africa: the Literature	17
1.5	Objectives of the Study	43
1.6	The Organisation of Chapters.....	45
2	The Evolution of the Broad Based Black Economic Empowerment Policy in South Africa	49
2.1	Introduction	49
2.2	Where are the Big Six? The Unbundling of the Conglomerates and the Incorporation of Blacks.....	50
2.3	The Elaboration of BEE Policy	59
2.4	The DME and the Elaboration of the BEE Policy for the Mining Industry	63
2.4.1	The Minerals and Petroleum Resources Development Act (MPRDA)....	68
2.4.2	The Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry	71
2.4.3	The Mining Scorecard	74
2.5	The DTI and the Elaboration of the BEE Policy for the Economy at Large	76
2.5.1	The Broad Based Black Economic Empowerment Act (2003)	78
2.5.2	The B-BBEE Generic Score Card and Generic Codes of Good Practice	80
2.6	The BEE Policy Amendments.....	83
2.6.1	The Amended Mining Charter	83
2.6.2	The Amendment of the B-BBEE Act (2003)	86
2.7	Conclusion	87
3	Government Economic Intervention and Economic Empowerment.....	89
3.1	Introduction	89
3.2	Government Economic Intervention: Market Friendly Measures	91
3.3	Government Economic Intervention in Response to Economic Injustices: Lessons from elsewhere	98
3.3.1	Affirmative Action in the USA	98
3.3.2	Economic Empowerment in Malaysia.....	104

3.3.3	Indigenisation in Nigeria	110
3.4	Government Intervention and Economic Growth and Transformation.....	115
3.4.1	Economic Intervention in Japan	116
4	Research Design and Methodology	124
4.1	Introduction	124
4.2	The Research Process: Considerations and Methods.....	125
4.3	Study Sample	127
4.4	Data Collection	129
4.4.1	Secondary Data.....	129
4.4.2	Primary Data	131
4.5	Data Analysis.....	136
4.6	Research Limitation and Challenges	139
4.7	Conclusion	143
5	The B-BBEE and Changes in Ownership in South Africa's Mining Industry	144
5.1	Introduction	144
5.2	Licensing as a Vehicle for Entry of Blacks in the Mining Industry	144
5.3	Estimating BEE Equity Ownership in the Mining Industry Using JSE Data.....	147
5.4	Inside the BEE Honey Pot: Mining Deals in the Various Mineral Commodities	153
5.4.1	BEE Deals in the Platinum Group Metals (PGMs).....	154
5.4.2	BEE Deals in Diamond.....	164
5.4.3	BEE Deals in Gold.....	167
5.4.4	BEE Deals in Coal.....	178
5.4.5	BEE Deals in other Mineral Commodities	186
5.5	Black-Enterprises and Black-Empowered Companies.....	191
5.6	Conclusion	193
6	The B-BBEE Policy and Management and Control in the Mining Industry...	197
6.1	Introduction	197
6.2	Control of Corporations.....	198
6.3	Past Corporate Ownership and Control Structures in South Africa....	204
6.4	Control what you own: Are Blacks on the Mining Companies' Control Wheel?	205
6.4.1	Black Representation on the Board of Directors	211
6.4.2	Blacks in the Top Management of Mining Companies	214
6.5	Conclusion	216

7	B-BBEE Policy Compliance in the Mining Industry: Problems and Issues...	218
7.1	Introduction	218
7.2	Licensing of the Mining Companies	218
7.3	B-BBEE Policy Compliance	227
7.4	BEE Business Partnership	232
7.5	BEE Funding and Conditions Attached	246
7.6	The Role of Government in the Implementation of the B-BBEE Policy	251
7.7	The Future of B-BEE Policy	258
7.8	Conclusion	259
8	Study Discussion Conclusions and Recommendations.....	262
8.1	Introduction	262
8.2	Findings with Regard to Research Objectives	265
8.2.1	Mining Companies Compliance with BEE Equity Ownership and Management and Control	265
8.2.2	Reclassification of Mining Companies under B-BBEE Policy	270
8.2.3	Strategies Used by Foreign and White-Owned Companies to Transfer Equity Ownership	272
8.2.4	Forces that Facilitates or Hinder the BEE Implementation Process	274
8.2.5	The Role of the Government	277
8.3	Recommendations and Areas for Further Studies	279
9	References	284
10	Appendices.....	320
10.1	Amended Score Card for South Africa's Mining Industry	320
10.2	Score Card for South Africa's Mining Industry	321
10.3	Generic Score Card: Elements and Weightings Points.....	322
10.4	Questionnaire to the DMR Officials.....	323
10.5	Questionnaire to Executives of White and Foreign-owned Companies	325
10.6	Questionnaire to Executives of BEE Companies	329
10.7	A Sample of Companies Used in the Study and Interviewees	333
10.8	JSE Mining Companies: Market Capitalisation	336

List of Tables

Table 1.1: South Africa's Mineral Reserves	11
Table 1.2: Contribution of Mining to GDP, Fixed Capital Formation and Total Exports.....	13
Table 0.1: Summary of Market Failures and Major Instruments to Deal with them.....	97
Table 5.1: Number of Different Licenses Given to Mining Companies by 2012	146
Table 5.2: BEE Deals Concluded in PGMs.....	156
Table 5.3: BEE Deals Concluded in Diamond	165
Table 5.4: BEE Deals Concluded in Gold.	168
Table 5.5: BEE Deals Concluded in Coal	179
Table 5.6: Some Black-owned Companies Operating in Coal	185
Table 5.7: BEE Deals Concluded in other Minerals	187
Table 0.1: Board Membership in Mining Companies	211
Table 0.2: Top Management of Mining Companies	214

List of Figures

Figure 1.1: Selected Active Mines.....	10
Figure 1.2: Contribution of Mining and Quarrying to GDP in Market Prices Adjusted 2005	12
Figure 5.1: Number of Black-owned Companies by Commodities	147
Figure 5.2: Market Capitalisation of the JSE Mining Companies by Value	150
Figure 5.3: Market Capitalisation of the JSE Mining Companies by Percentage	151
Figure 5.4: The Structure of Gold Fields Limited before BEE Transactions....	172
Figure 5.5: The Structure of Gold Fields Limited (GFIM SA after BEE Transactions	173
Figure 5.6: Anglo American Plc. and its BEE Deals in Coal.....	179
Figure 0.1: Black Representation on the Board of Mining Companies.....	213
Figure 0.2: Black Representation in Senior Management of Mining Companies.....	216
Figure 7.1: The Dube Community Representatives Receiving a Once-off Endowment of R17, 5 million from RBM	236

List of Abbreviations

AAC	Anglo American Corporation
AEMAFC	African Exploration Mining and Finance Corporation
AMG	Africa Mining Group
ANC	African National Congress
ANCYL	African National Congress Youth League
ANG	AngloGold Ashanti Ltd
AQSA	Aquarius Platinum South Africa
ARM	African Rainbow Minerals
ARMC	African Rainbow Mineral Consortium
B-BBEE	Broad Based Black Economic Empowerment
BEE	Black Economic Empowerment
BEE Com.	Black Economic Empowerment Commission
BECSA	BHP Billiton Energy Coal South Africa
BMF	Black Management Forum
CADFund	China Africa Development Fund
CAH	Capital Alliance Holdings
CAN	Capital Alliance
CEO	Chief Executive Officer
CGC	Credit Guarantee Corporation (Malaysia)
CGFSA	Consolidated Gold Fields South Africa Ltd
CGS	Council for Geosciences
CODESA	Congress for a Democratic South Africa
CRF	Central Energy Fund
COSATU	Congress of South African Trade Unions
DBCM	De Beers Consolidated Mines Ltd
DBSA	Development Bank of Southern Africa
DFI	Direct Foreign Investments
DME	Department of Minerals and Energy
DMR	Department of Mineral Resources
DRDGold	Durban Rooderpoort Deep Gold
DTI	Department of Trade and Industries

EBITDA	Earnings before Interest, Taxes, Depreciation and Amortization
EEOC	Equal Opportunity Employment Commission
ENRC	Eurasian Natural Resources Corporation
EPA	Economic Planning Commission (Japan)
ESOPs	Employee Share Option Programmes
FABCOS	Foundation for African Businesses and Consumer Services
FAMA	Food and Marketing Authority (Malaysia)
FDI	Foreign Direct Investments
FELDA	Federal Land Development Authority (Malaysia)
GDO	Gold One International
GDP	Gross Domestic Product
GEAR	Growth, Employment and Reconstruction
GenMin	General Mining Metals and Minerals
GFI	Gold Fields International Limited
GFIJVH	Gold Fields One Joint Venture
GFIMSA	Gold Fields One Mining South Africa
GFO	Gold Fields Operations Limited
HAR	Harmony Gold Mining Company
HCI	Heavy Chemical Industries (South Korea)
HDSA	Historically Disadvantaged South Africans
HOLDCO	Holding Corporation
IBRD	International Bank for Reconstruction and Development
IDC	Industrial Development Corporation
IDRC	International Development Research Council (Canada)
IMR	International Mineral Resources
IPOs	Initial Public Offerings
JCI	Johannesburg Consolidated Investments
JIC	Johnnies Industrial Corporation
JNMC	Jinchuan Mining Company
JSE	Johannesburg Stock Exchange
JV	Joint Venture
KDB	Korean Development Bank

KDC	Kloof Driefontein Complex
KCCI	Korean Chamber of Commerce and Industry
LSE	London Stock Exchange
MARA	Peoples Trust Council (Malaysia)
MARDI	Malaysian Agricultural Research Development Institute
MEC	Mineral and Energy Complex
MEPC	Mineral and Energy Policy Centre
MEs	Micro Enterprises
MIDF	Malaysian Industrial Development Foundation
MIDGETT Team	Mining Industries, Growth, Development and Employment Task Team
MITI	Ministry of International Trade and Industry
MNC	Multi-National Corporations
MPRDA	Minerals and Petroleum Resources Development Act
NAFCOC	National African Federated Chamber of Commerce and Industry
NAIL	New Africa Investment Limited
NAWA	National Women Alliance
NDC	National Development Corporation
NDP	New Development Policy (Malaysia)
NEDCO	National Economic Development Corporation
NEF	National Empowerment Fund
NEP	New Economic Policy (Malaysia)
NEPFA	National Empowerment Funding Agency
NICs	Newly Industrialising Countries
NIF	National Investment Fund (South Korea)
NP	National Party
NPDC	Nigerian Petroleum Development Corporation
NUM	National Union of Mine Workers
OAU	Organisation of African Unity
OCSF	Operating Cash Flow Shortfall Facility
OMBE	Office of Minorities Business Enterprises (USA)
PAC	Pan African Congress

PGM	Platinum Group Metals
PIC	Public Investment Corporation
PMC	Palaborwa Mining Corporation
PSVs	Pool and Share Venture
QSEs	Qualifying Small Enterprises
RBM	Richards Bay Minerals
RBPM	Royal Bafokeng Platinum Mine
RBTC	Richards Bay Coal Terminal
RDP	Reconstruction and Development Programme
RISDA	Rubber Industry Small Holders Development Authority
RMA	Rand Monetary Area
RSA	Republic of South Africa
RTOs	Reverse Takeovers
SAA	South African Airways
SACTWU	South Africa Clothing and Textile Workers Union
SACU	Southern African Customs Union
SAMDA	South Africa Mining Development Association
SAMI	South Africa Mining Industry
SANAS	South African National Accreditation System
SAP	Structural Adjustment Programme
SARHWU	South African Railways and Harbours Workers Union
SAWEMA	South African Women in Mining Association
SEAT	Social Economic Assessment Tool Box
SEDAs	State Economic Development Corporations (Malaysia)
SIM	Simmer and Jack Mines Limited
SIM Report	State Intervention in Mining Report
SMEs	Small and Medium Enterprises
SOEs	State-owned Enterprises
SPV	Special Purpose Vehicle
STAMICO	State Mining Corporation
SUEs	Start Up Enterprises
TBVC	Transkei, Bophutatswana, Venda and Ciskei

TEM	Trans World Energy and Mineral Resources
UASA	United Association of South Africa
UDA	Urban Development Authority (Malaysia)
UK	United Kingdom
USA	United States of America
VIL	Village Main Reef Gold Mining Co. Ltd.
WDBH	Women Development Bank Holdings
WGR	Witwatersrand Consolidated Gold Resources Limited
WOESA	Women Executives South Africa

1 Introduction

1.1 Why Research BEE Equity Ownership and Control in South Africa's Mining Industry?

This study seeks to establish the extent to which black people in South Africa have acquired equity ownership and attained control in South Africa's mining industry after the passing of the Mineral and Petroleum Resources Development Act (MPRDA) of 2002 that was followed by the Mining Charter (2002)¹ and the Black Economic Empowerment (B-BBEE) Act of 2003. All of these legislations came into force in 2004. These are core policies that guide the ANC government's economic intervention in the predominantly market economy, in order to redress the economic imbalances created by the apartheid regime. The regime had used extensive laws and regulations that racially dictated to social, political and economic life.

The B-BBEE Act defines the term 'black people' as a generic term that represents Indian, Coloured and African citizens of the Republic of South Africa by birth or decent. The three race groups are also referred to as Historically Disadvantaged South Africans (HDSAs) in the MPRDA. Throughout the study I have used the term 'black people' or simply 'blacks' and HDSAs collectively, with no pejorative connotations. In the same manner, I have also used the term 'white people' to represent the non-black population in South Africa.

The reasons for ANC government's intervention in the economy were initially spelled out in the Reconstruction and Development Programme (RDP) published in January 1994 as ANC's election manifesto. The aim was to mobilise the country's resources in order to de-racialize the economy. The RDP spelled out five programs: meeting basic needs, developing human resources, building the economy,

¹ The Charters represent an agreement between stakeholders in each sector. The Mining Charter, for example, was concluded between the government and the representatives of the mining companies on how the MPRDA is to be implemented in the Mining Industry. For the roles of charters in the implementation of MPRDA and the B-BBEE policy, see Khehla and Reddy 2007. *BEE 2006: Charters and Deals*. Business Map Foundation.

democratisation of the society and implementing the RDP programs (see RDP Document section 1.4). With regards to building the economy, the RDP prescribed to government how to address racial and gender inequalities in ownership, employment and skills. Regarding the mining industry, the RDP dictates how to transfer private mineral rights to the state and how to transform the industry to the benefit of all the people through government intervention and the use of incentives and disincentive measures (see RDP document section 4.5.1.2 and 4.5.1.3). It would thus appear that the ANC has shifted from the 1955 Freedom Charter. According to this Charter, “the mineral wealth beneath the soil, the banks and monopoly industry should be transferred to the ownership of the people as a whole”, that is, through nationalisation (ANC 1955:82). Nationalisation was dropped in the final version of the RDP document, as it would have been expensive and unattractive to both domestic and foreign investors.

Upon assuming power in 1994, it took time for the ANC government to come up with a formal policy that would transform the economic character of the country where people of all races were going to participate as equal citizens in the economy. The earliest intervention began with the changing of the 1991 Mining Law, under which minerals under the ground were privately owned. This intervention introduced a new mineral law - the MPRDA where the state became the custodian of mineral resources. The government used licencing as a policy instrument to grant mineral rights to private companies, and in doing so; it offered preferential treatment to blacks aspiring to participate in the extractive activities. The Mining Charter required all white and foreign-owned companies that existed before the act to convert their mining licences, referred to as old order rights to new order rights by 2009. The government used the process of conversion of licences to enforce entry of blacks and ensure compliance of the Mining Charter. In particular the Charter required all white and foreign-owned companies to transfer equity to blacks and for blacks to participate in management and control of mining assets regardless of their shareholding. Thus, equity ownership transfer involve blacks acquiring shareholding in the white and foreign-owned companies, having their own companies that engage in mineral extraction or entering into partnership with the white and foreign-owned

companies. In order to control the mining assets, blacks have to make up 40 per cent of the management of mining companies. The prescription was specified in the Mining Charter Scorecard which came with the Mining Charter. The equity targets were set at 15 per cent by 2009 (which coincided with the end of the mining licences conversion period) and increase to 26 per cent by 2014. The transactions were to be conducted under market principles. The Charter specifically states that:

“Whilst it is government policy to play a facilitating role in the transformation of the ownership profile of the mining industry it will allow the market to play a key role in achieving this end and it is not the government’s intention to nationalize the mining industry.” (Mining Charter Preamble)

Instead of nationalisation, the government sought to change the ownership structure of the economy. The transferring of equity was expected to increase participation of blacks in the economy, de-racializing it. To that effect, there would emerge within the industry black controlled companies (where blacks own 50 plus 1 per cent vote), strategic joint ventures or partnership (with blacks having 25 plus 1 vote) and others would be passive shareholders that may own up to 100 shares with no control (see Mining Charter section 4.7).

The terms black controlled, black enterprises and black owned companies are used interchangeably in the literature about the BEE policy. This thesis has also used these terms in the same manner. The term Broad-Based Black Economic Empowerment (B-BBEE) policy has been used mostly after the enactment of the B-BBEE Act in 2003 while the term Black Economic Empowerment (BEE) was used before the official policy was in place to refer to the issues of economic empowerment policy in general and is still widely used in this manner. This thesis uses the term B-BBEE to relate to the issues of the official policy and the term BEE for general applications. For example, the term BEE deals is used to refer to business deals concluded between white and foreign-owned companies with their black counterparts, while BEE companies is a concept utilised to refer to companies owned by blacks.

How the B-BBEE Act is to be implemented is defined by the Generic Score Card and the Codes of Good Practice. The Generic Score Card outlined six broad elements that the white and foreign-owned companies are obliged to comply with. These are equity ownership, management and control, skills development, employment equity, enterprise development and preferential procurement. The same elements also appear in the Mining Charter. The entire policy processes are further elaborated upon in this study's Chapter Two. The bulk of this research, however, limits its focus to equity ownership, control and management of firms in South Africa in the mining industry.

The study's interest in ownership and control in the mining industry has been building up over years inspired by reading various literature, being involved in discussions at conferences and having conversations with friends and colleagues about Africa's economic development and challenges. The conversations often drifted to Africa's mineral wealth and its potential not only to create wealth and alleviate poverty but mostly the overwhelming ownership and control of mineral assets by foreign investors, who are thought to reap most of the benefits, repatriate profits, and pay little tax to their host countries. Citizens are often concentrated in artisanal and small scale mining activities but not in large mining companies even after fifty years of Africa's independence. The government leaders are suspected of corruption, because they conclude mining contracts with the multinational corporations secretly. To many, mining ventures have become ivory towers with little trickle-down effect to the rest of the economy. Communities where the mining operations are taking place have nothing to show for and know very little of what takes place in the gated mining compounds and fenced mining areas. This reality has been portrayed by the media and acknowledged by the African Union and the Economic Commission for Africa (Kenny and Mather 2005; Schroeder 2006; Garande 2008; Mabasa 2007; Raftopoulos 2007; African Union 2009; Economic Commission for Africa 2011).

Mnwana (2014:826) argued that direct control of natural resources by local communities is a precondition for equitable utilisation of natural resource wealth and the peaceful co-existence between mining corporations and the local communities

around the mines. Giving an example of Nigeria (in particular in the oil rich Delta area), Sierra Leone and Democratic Republic of Congo (DRC), Mnwana said that the absence of direct community participation in their mineral wealth has contributed to conflicts and agitation for local autonomy and control of mineral resources by indigenous populations in their respective localities.

Having control of mineral resources has always been part of the policy agenda of mineral rich African countries. Immediately after independence some governments in Africa sought ways to directly own and control mineral resources and have citizens participate actively in economical production in general. As indicated by Wilson 111, governments resorted to state ownership and indigenisation policies or the mixture of the two. Indigenisation was preferred in countries where there was an emergent local business class, but where this group was insignificant, government ownership was extended to all sectors of the economy. In particular, governments sought to have monopoly over mineral resources which went as far as nationalisation and forbidding or limiting foreign and local ownership (Wilson 111 1990:406). For example indigenisation and state ownership was extensive in Nigeria (under different political leaderships), while nationalisation was pursued in countries like Tanzania under President Nyerere, Zambia under President Kaunda, Mali under Modibo Keita and Zaire (now DRC) under President Mobutu Sese Seko in the hope of having control and increase benefits from the mining sector. The end result was almost total collapse of their mining industries (Cawood et al 2001; Campbell 2013:57).

In order to understand the limitations of mineral wealth benefits to those countries that have them, extensive literature has been explored. First to be scrutinised is the literature on ‘minerals as a resource curse.’ Under this body of literature, scholars have argued that mineral exploitation in mineral rich developing countries has not led to improved economic performance, significantly contributed to economic development and alleviate poverty. It is this that is regarded as a resource curse. Regrettably, common among these countries are high levels of corruption, conflicts and civil wars (Sachs and Warner 1995, 2001; Cilliers and Dietrich 2000; Marshall 2001; Stevens 2003; Rosser 2006; Wick and Bulte 2006; Arezki and van der Ploeg

2008; Bhattacharyya and Holder 2009; Brunnschweiler and Bulte 2009; Mnwana 2014).

In the 1980s and 1990s, Sub-Saharan African countries were forced under the structural adjustment programmes (SAPs) of the World Bank and the International Monetary Fund to introduce reforms. These included liberalisation, privatisation, and promotion of foreign investments. With regard to the mining sector, increased transparency of mineral revenue flows, control of illicit flows of minerals and better resource governance were foregrounded. It was expected that these reforms would increase benefits to mineral rich countries in Africa (Campbell, 2013:2-3).

It has been generally accepted that reforms under the structural adjustment programs (SAPs) have contributed significantly to increased foreign direct investments and mineral exports (Maliyamkono and Mason 2006). However, SAPs contributions to the increase in government revenue, employment, improving human rights and protecting the environment have been questioned. Campbell, in his study that covered the DRC, Guinea, Ghana, Madagascar and Mali, found that these countries still did not experience significant increase in revenues. He said there were two main reasons for this failure. First is that extensive incentives such as exemptions from customs and import duties, capital gains tax, dividend withholding taxes, corporate taxes, liberal capital allowances, offshore sales revenue retention, repatriation of dividends and the payment of loyalty at the lowest rates have limited governments' revenues from mining. Second, the relegation of states to the roles of regulators and more to the facilitators of foreign investments in the mining sector and the emphasis on mining for export has limited the trickle down effects, industrial diversification and infrastructural development. Instead the implementation of SAPs has resulted in the spread of mining enclaves (Campbell 2009:26, 247).

SAPs were not geared to promoting indigenous or citizen investors to own or control large scale mining assets. Instead, SAPs shifted the national governments' attention to attracting foreign investors in the midst of their quest for adhering to market principles, dealing with problems created by artisanal and small scale mining and

enforcing corporate social responsibility. Although this literature is enlightening, national policies that promoted locals/indigenous citizens to own mineral assets is limited. Little is therefore known about policies that seek to promote indigenous citizen entrepreneurs to own particularly large scale mining assets. This thesis sought to fill this empirical vacuum.

There have been, of course, few exceptions to the resource curse epidemic in sub-Saharan Africa. Among the exceptions is Botswana (which became my home from the mid-1980s to early 1990s). The country used its mineral wealth (mainly diamonds) to develop the economy. The government has unique partnership with De Beers, one of the biggest diamond mining companies in Southern Africa. The government of Botswana has entered into a 50 – 50 shareholding deal with De Beers in Debswana, a company they formed to carry out diamond mining in the country. De-Beers hasn't offered other host governments such a deal. In 2012, the country established its 100 per cent state-owned company-the Okavango Diamond Company, to market diamonds right from Gaborone (Rapport News; 17 September 2013). Botswana's success is hardly associated with its ownership structure, but to its sound macroeconomic policy. This policy enabled the country to accumulate foreign reserves, mitigated the effect of the Dutch disease and avoid wasteful spending and indebtedness (Wright 2002; Mwaipose and Matsheka 2002; Mwaipose 2003; Save the Children 2003; Robertson 2009; Luong and Weinhal 2013. To Mwaipose (2003.3) Botswana's success is due to having strong political and economic institutions and autonomous technocrats who are committed to long term development goals. Thus, institutions are endogenous to a successful management of mineral resource and their absences are underlying cause of a resource curse.

Before the dawn of non-racial democracy in South Africa the mining industry has been very important to the country's economic development. The country has successfully used the exploitation of its mineral wealth to bring about economic diversification and a higher level of industrialisation. This has happened, however, through deliberate policies that excluded blacks from participating in the economy and the mining industry as owners or controllers of mineral assets. Studying BEE

equity ownership and control in South Africa's mining industry was, therefore, an opportunity to explore how the country has succeeded in enabling those once excluded, to own and control mining assets.

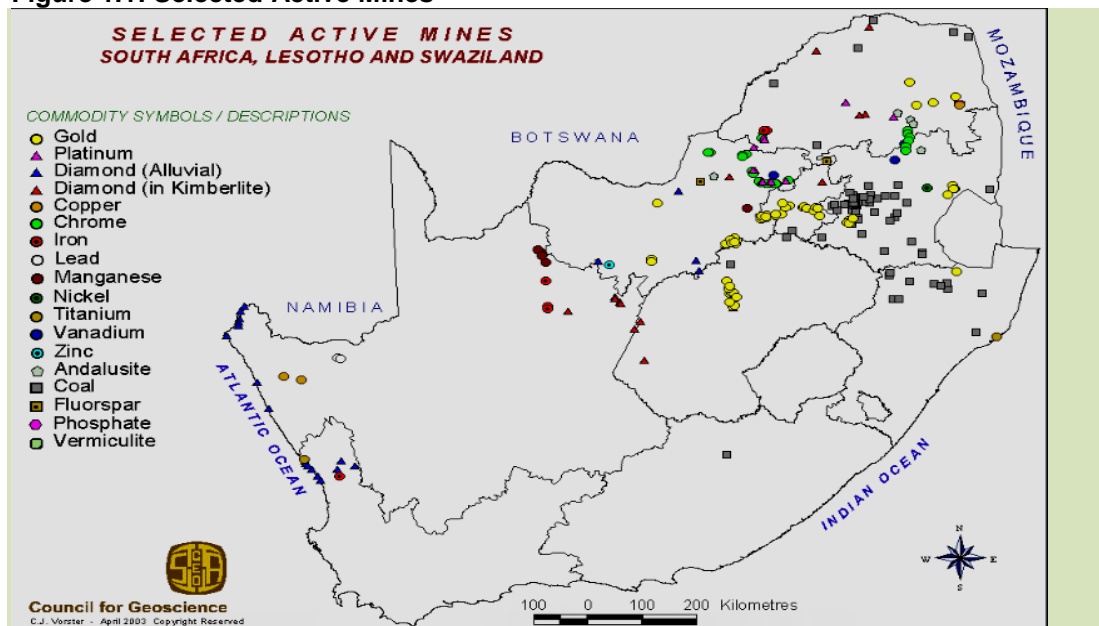
This thesis is timely, as it coincides with an increasing number of the discoveries in Africa of potential mineral and other natural resources such as natural gas and fossil oils. Examples of such countries are Tanzania, Uganda, Kenya, Mozambique, and South Sudan. South Africa's BEE policy is seemingly showing the way to increase citizen participation in the economy and in the mining sector. Namibia and Zimbabwe, which gained independence in 1989 and 1980, respectively, have embarked on the transfer of mining assets to indigenous citizens (LaRRI and NUNW 2003; Ritter and Gaomab 2005; Law Development Commission 2007; Mabasa 2007; Andreason 2010; Sibanda 2014). During South Africa's negotiations of the transfer of power from apartheid rule to non-racial democracy, Saki Maxozoma, a leading ANC party member at the time, was also involved in negotiations that led to the promulgation of Zimbabwe's Indigenous Act in 2007. This is an indication of cooperation at higher levels of policy making leadership among the neighbouring countries. Zimbabwe's Indigenisation Economic Empowerment Act of 2007 initially demanded that companies with share capital above \$500,000 surrender 51 per cent of their asset to indigenous Zimbabweans within a period of five years. This sparked a contentious debate between the supporters of the policy who saw this as a chance of the "domestication of resources", on the one hand, and those against the policy, on the other hand. The latter pointed to the negative economic effects of the policy such as driving away foreign investments (Sibanda 2014:25-26).

Nigeria, having pursued indigenisation forty years with the aim of empowering its indigenous citizens in business, experienced capital flights and limited cooperation from the foreign companies. Thus, this study offers new insights on how to approach policies that seek to empower citizens or indigenous people. It is likely to help in countries rich in mineral resources in dealing with the challenges of empowering its indigenous/local citizens in the midst of well-established foreign companies.

As indicated earlier, the MPRDA and the Mining Charter represent South Africa's government economic intervention in the mining sector. This can be appreciated when it is placed within the broad context of the importance of mining in the country's development and the apartheid policies that excluded blacks from owning and controlling economic ventures. The following two sections address these two elements.

1.2 The Importance of Mining to the South African Economy

Going back to the discovery of diamonds in 1870 in Kimberley and to the discovery of the world's largest gold reserves in the Witwatersrand area in 1886, the South African mining industry is well established. According to Handley (2004), the extraction of minerals led to rapid industrialisation in the country as the manufacturing sector grew to produce intermediate goods to satisfy the needs of the mines and other sectors of the economy. The diversification of mining assets allowed the capital accumulated in mining to be used in expanding the country's industrial structure. Mining activities led to the improvement of infrastructure (electricity, transport and water supply), financial services and attracted foreign investments (Seidmann and Seidmann 1977:50-51; Falkena 1979:33; Nattrass 1981:163-164; Fine and Rustomjee 1996; Baxter 2009). The minerals are spread in various parts of the country, as shown in the map below.

Figure 1.1: Selected Active Mines

Source: Council for Geosciences

South Africa's main mining areas are: the Witwatersrand basin which is a source of 93 per cent of South Africa's gold output, uranium, silver, pyrite and osmium; the Bushveld complex associated with large deposits of PGMs, chromium and vanadium and large deposits of industrial minerals (titanium fluorspar and andalusite); the Transvaal Super-group with large deposits of manganese and iron-ore; the Karoo Super-group which covers two-thirds of the country and extends through Northern Cape, North-West, Free State, Gauteng and Mpumalanga, Kwa Zulu Natal, and Limpopo provinces and from which coal and anthracite are mined; the Palaborwa Igneous Complex has copper, phosphate, titanium, vermiculite, feldspar and zirconium ores; the Kimberlite pipes found around Kimberley and Witwatersrand produce diamonds. Diamonds are also found in secondary alluvial, fluvial and marine areas. In the coastal areas, there are heavy mineral sands, zircon and magnetite. The Bushmanland Group has significant deposits of lead-zinc ores, copper and silver (DMR, 2009c; Baartjes and Goudan, 2011). The mining conglomerates have mining leases in most of these areas and most of the Bushveld complex falls under the area owned by the Royal Bafokeng nation which has become one of the major community shareholders under the BEE policy.

Despite many years of extraction, South Africa still has huge and diverse of mineral reserves. According to SAMI's 2009 report, mineral reserves were worth US \$2.5 trillion, making this country the fifth largest in terms of GDP value in the world. The country produces over 60 different minerals. It accounts for 88 per cent of the platinum group metals (PGM), 80 per cent of manganese, 72 per cent of chrome, 32 per cent of vanadium, 13 per cent of gold and over 30 per cent of ferrochromium and alumino-silicate in the world (DMR 2009c; DMR 2010b). Some of the important minerals produced in South Africa are shown in table 1.1 below.

Table 1.1: South Africa's Mineral Reserves

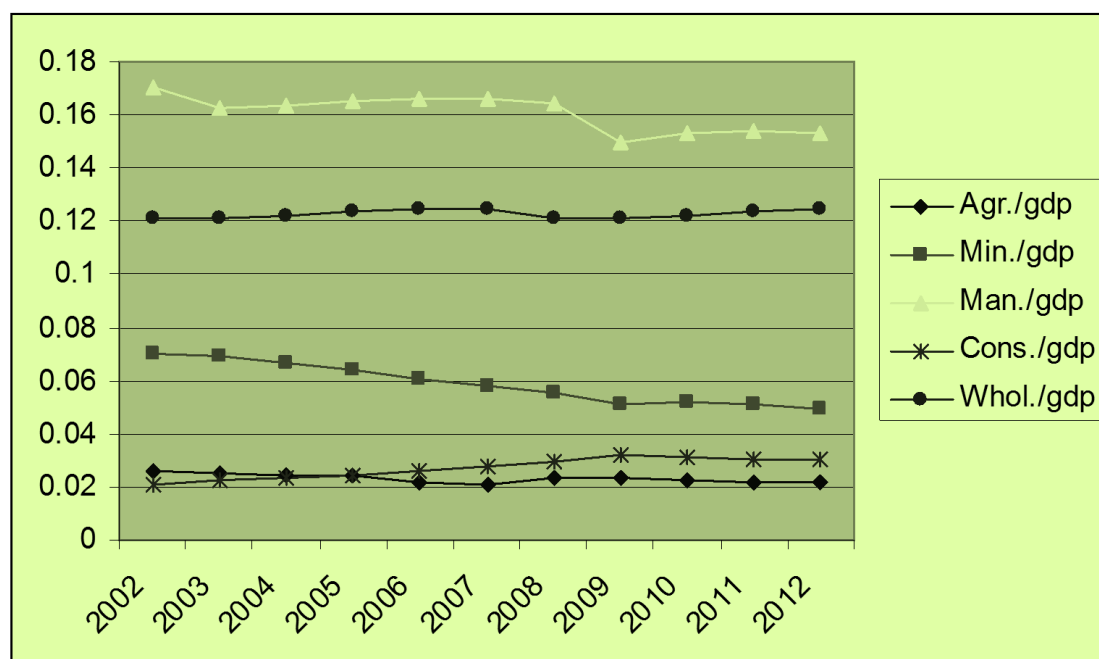
Commodity	Reserves		
	Unit	Mass	World percentage
Alumina-silicate	Mt	51	X
Antimony	Kt	350	16,7
Chrome Ore	Mt	5 500	72,4
Coal	Mt	30408	7,4
Ferro-chrome	X	X	X
Gold	T	6 000	12,7
Iron –ore	Mt	1 500	0,8
Lead	Kt	3 000	2,1
Manganese ore	Mt	4 000	80,0
PGMs	T	70 000	87,7
Phosphate Rock	Mt	2 500	5,3
Uranium	Kt	435	8
Vanadium		12 000	32.0
Zinc	Mt	15	3,3
Zirconium	Mt	14	25

Source: Compiled from various SAMI Reports

KEY: Mt= Meter ton; Kt=Kilo ton; T= ton; X= Data not available

Over the years, mining has contributed to the country's GDP, which reached its peak in 1980 when it accounted for 25 per cent. However, since 1990, mining contribution to GDP has been continuously declining. It was 10 per cent in 1999 and then declined to 7.6 per cent in 2000 (Tshitekere 2012:71-73; the DMR 2009c:10). It dropped to a low of 6.4 in 2004 before rising again to 9.2 in 2008 as indicated in table 1.2. Compared to other sectors of the economy, mining's importance as a contributor to GDP has been overtaken by manufacturing and wholesale trade. Figure 1.2 indicates GDP contribution by various sectors between 2002 and 2012.

Figure 1.2: Contribution of Mining and Quarrying to GDP in Market Prices Adjusted 2005



Source: Created from Statistics South Africa Data

Mining's contribution to fixed capital formation and exports has also been declining. Fixed capital formation averaged at 10 per cent between 2001 and 2009 and fell below 10 per cent in 2005 and 2006 (SAMI Report 2009:10). While in the 1990s mineral exports accounted for more than 60 per cent of total exports and over 50 per cent of foreign exchange earnings (Jones 2010:80), its contribution to total exports declined to 30 per cent between 2001 and 2009. According to Tshitekere (2012:80), the fall in export earnings has mainly been attributed to a decline in gold production and exports. Gold production weakened from 568.7 tons in 1987 to 342.7 tons by 2004 and lost its number one position to PGMs (DMR 2009c:10). Table 1.2 indicates the contribution of the mining sector to the GDP, fixed capital formation and exports between 2001 and 2009.

Table 1.2: Contribution of Mining to GDP, Fixed Capital Formation and Total Exports

Contribution to Value Added				Contribution to Fixed Capital Formation			Contribution to National Totals		
Year	National Gross Domestic Product			Total Fixed Capital Formation	From Mining		Total Exports	From Mining	
	R mn	From Mining	%	R mn	R mn	%	R mn	R mn	%
2001	1020007	77214	7.6	153525	15871	10.3	265832	89943	33.8
2002	1171086	92730	7.9	172151	19802	11.5	333251	109357	32.8
2003	1272537	82770	6.7	196999	21706	11.0	291434	86747	29.8
2004	1415237	91198	6.4	226180	17917	7.9	310525	89546	28.8
2005	1571082	105992	6.7	263754	16743	6.3	358361	102486	29.1
2006	1767422	132301	7.5	324083	27715	8.6	447690	138878	31.8
2007	2017102	156969	7.8	406918	39742	9.8	533791	161755	30.3
2008	2283223	210079	9.2	513749	51266	10.0	704293	219593	30.8
2009	2176599	198180	9.1	531957	64940	12.2	556432	176837	31.7

Source: SAMI Report 2009:10

The contribution of the mining industry to employment growth has also been declining. For instance, in the 1980s, the gold industry alone accounted for the employment of around 500,255 people, but this fell to 120,000 by 2005. Even if one considers employment for the mining industry as a whole, it has also been declining and stood at 498,141 in 2010 (Tshitekere 2012:95).

Apart from the gloomy picture indicated here, the Chamber of Mines (2010:2) estimated that the direct and indirect contribution of the mining industry was 19 per cent of the GDP and mining still contributes significantly to the national budget through corporate tax and royalties. For example, in 2010 the industry contributed R17 billion (£1.5 billion) in corporate tax and R6 billion (£545 million) in royalties (Statistics South Africa 2010). Jones (2010:73-74) and Netshitenzhe (2010a) refers to its positive contributions should be considered in terms of the multiplier effect, backward linkages (products used by the industry from other industries), forward linkages (products from mining used by others) and lateral linkages (mining transactions in banking, insurance and the transport sector). It is further expected to

form the backbone of the country's Mining and Energy Complex (MEC) and it is this industry that the government considers important for its de-racialization program.

It is important at this juncture to look at the policies that have resulted in blacks being marginalized. This historical analysis helps to understand the root of the social-economic imbalances that exist and the challenges that black people face. This is important if policy makers have to search for a much holistic approach that will make the BEE policy succeed.

1.3 The Wrongs of Apartheid and the Roots of Social and Economic Imbalances

South Africa's social and economic imbalances that blacks face can be traced back to the laws that underpinned the colonial and apartheid governments' policies for years. Although space does not permit for these legislations to be detailed, a few need to be discussed. First was the 1913 Native Land Act (No 27)² which the colonial government used and which limited the land available to blacks to 7 per cent despite the fact that they constituted over 80 per cent of the population. When non-racial democracy dawned in 1994, black people, who were 90 per cent of the population, occupied only 13 per cent of the land while whites, who constituted less than 10 per cent of the population, occupied 87 per cent of the land and commanded all heights of the economy (Luhabe 2007:136–138). With limited access to land, blacks could no longer economically engage in farming and were forced to provide unskilled and cheap labour. The Act also denied black people the right to have individual land titles even in the Bantustan areas (that were historically reserved for Africans). Here tribal land ownership was strongly promoted and supported by the apartheid regime (Hirsh 2005:13).

Second, is the Natives (Urban Areas) Act of 1923 which prevented blacks from purchasing or leasing land in areas designated only for whites. The Natives (Urban Areas) Consolidation Act of 1945 prescribed that black businesses could only sell

² In July 2013 the country remembered 100 years of land expropriation by whites.

daily essential goods, a list of hardly twenty necessities such as milk, cigarettes, paraffin, candles and local beers. More discriminatory laws were put in place by the apartheid government that came into power in 1948. These acts include the 1951 Bantu Authorities Act (No. 68) which restricted blacks to their tribal, regional and territorial authorities. This came to be known as separate development policy which saw some homelands being granted independence within the Republic of South Africa. These were Transkei, Bophuthatswana Venda, and Ciskei (generally referred to as the TBVC states).

The Bantu Authorities Act was immediately followed in 1952 by the Native Laws Amendment Act (No 54) which curtailed the migration of blacks to urban areas. Those who had to work in urban areas had to possess work permits and restricted to 12 hours of stay. They were forced to live in black townships as mandated by the Group Areas Act (Act no 41 of 1950). This act prescribed for the demarcation of residence in terms of race, such as 'white areas,' 'coloured areas' 'Indian areas' and 'black townships.' Most townships had and still have 'shacks', informal houses made of pieces of discarded old wood, plastics and rusty-iron sheets with no modern sanitation system. Shacks have remained one of the scars of apartheid that we see today across major cities and towns. However poverty and lack of job or expanded business opportunities escalated the influx of blacks to urban areas. The one man business policy was established in 1963 and prevented black people from running more than one business. The policy also prevented them from forming partnerships or establishing financial institutions or wholesale business, owning shares in public companies, owning business or any immovable property in "white areas" (those resided by people of the white race).

More acts were passed in 1953 and 1956 with respect to education and jobs. The Bantu Education Act (No 47) of 1953 decreed that blacks should be provided with separate education. This was to be provided in black alone facilities which were very poor and offered in native languages and Afrikaans (introduced by early European arrivals in the country and which became an official language). The act was supplemented in 1959 by the Extension of the University Act (No 45) which

prohibited blacks from attending white institutions (with a few exceptions like the University of the Witwatersrand and Rhodes University). The apartheid government established separate universities for Coloureds, Africans (mainly in the homelands) and Indians. These universities also differed in terms of the quality of education, with those of blacks offering inferior education. Education of poor quality is considered the main reason for the blacks' weak managerial, entrepreneurial, technical and intellectual knowhow. As a result, a large proportion of unskilled black labour was seen as a major stumbling block for increase in productivity (De Villiers 1974:22).

Other discriminatory acts that were passed included the 1911 Mine and Works Act (No.12); the 1926 Job Reservation Act and amendments such as the 1956 Industrial Conciliation Act (No 28). These reserved skilled jobs for whites and pushed blacks to unskilled jobs. Whites were paid higher remunerations and protected from competing with blacks. In short, economic opportunities for blacks were systematically blocked from the highly sophisticated and diversified economy. They ended up being taxi owners, hawkers and vendors, small shop keepers, backyard manufacturers and owners of "shabeens" (drinking places) (Hirsh: 2005:13).³

Apart from the repressive policies, over years the economy was controlled by few conglomerates. By 1992 top six white conglomerates accounted for 85% of the market capitalization of the Johannesburg Stock Exchange (JSE). These were Anglo American Corporation (with 33%), the Rembrandt Group (14.6%), Anglovaal (2.9%), the Liberty Group (4.7%), SA Mutual (14. 2%) and Sanlam (15.6%). They had various subsidiaries spreading in many sectors of the economy which resulted in a pyramid structure, cross ownership and interlocking directorship (Halse 1982, Hirsh 2005).

It is these realities that led former President Mbeki to say that one finds in South Africa the existence of two nations. One of these nations is white, relatively prosperous, regardless of gender or geographical dispersal. It has ready access to a

³ According to the IDRC (2001:10) there were in the 1980s 100-120,000 taxis owners, 150,000 hawkers and vendors, 50,000 small shopkeepers, and 70,000 backyard manufacturers.

developed economy, physical, educational, communication and other infrastructure. The second and larger nation is black and poor. This nation lives under conditions of grossly underdeveloped economic, physical, educational, communication and other infrastructure (Mbeki 1998: 71-72).

Few changes occurred in the South Africa's corporate structure just before the dawn of non-racial democracy, 1994. In early 1990s the conglomerates unbundled their corporate structure, but this was much on how they performed their functions and not much in terms of their control of mining assets. Thus, by the time the ANC took over power, the economy was still in the hands of white capital (Kantoor 1998; Randall 2000; Chabane et. al., 2006) and this has not substantially changed apart from the unbundling that has taken place. The unbundling process and its outcome are expanded on in chapter two of this thesis.

1.4 Black Economic Empowerment in South Africa: the Literature

The literature on BEE policy and its implementation continues to grow and not all can be captured here. The literature analysed here is irrespective of whether it came prior to or after the passing of the MPRDA, the Mining Charter and the B-BBEE Act. The discussion is grouped into three themes. These themes are: the justification for the BEE policy; acceptance of the policy by white and foreign-owned companies and; the implementation and outcome of the policy. The literature on implementation is limited to compliance levels, the strategies that white and foreign-owned companies use to finance BEE deals, unintended consequence such as fronting and cronyism and the absence of government institutions to oversee the implementation. Each of these is elaborated below.

There is almost a general agreement in the literature that the BEE policy was necessary, that is, given white domination of the economy. Thus Southall (2007:68), in his ten propositions about black economic empowerment, states that:

“The ANC’s use of state power to assert greater black ownership and control of the commanding heights of the economy was politically necessary and inevitable given the overwhelming extent of white domination of the economy in 1994.”

Cargill (2010), who grew up seeing preferences given to whites by the apartheid regime against their black counterparts, had this to say about the justification of the BEE policy:

“The unashamed preference given to Afrikaners during Nationalist rule rooted out Afrikaner poverty, ensured quality education in Afrikaans and created Afrikaner capitalists and corporations of world class standing. The Pondos are still impoverished, hailing from an area that ranks among the poorest in the country. So, when I took a leap from childhood to 1994, when the political arena changed and the scope for black opportunity widened, I saw logic in the baton of affirmative action being passed on from Afrikaners to black South Africans.” (Cargill 2010: 67)⁴

The above indicates that using preference policies to favour a race is not a new idea in South Africa’s political and economic landscape. The Afrikaner government used preferential treatment to benefit whites; and now the ANC government is doing the same to redress white racist inequities.

Balshaw and Goldberg (2008.25) indicate that given the racial policies that exclusively benefited the white race, de-racialization of the economy was necessary in order to equitably distribute economic opportunities and wealth for the benefit of all, but mostly to those who were denied the opportunity in the past. Hirsh (2005.164) said that the ANC government was aware that failure to redress racial inequities could reignite damaging conflicts between blacks and whites. The de-racialization of the economy was therefore a pre-requisite for political stability in the country.

Tied to the de-racialization of the economy was the need to create a class of black bourgeoisie, or what is also referred to as black entrepreneurial class or the black middle class (Mbeki 1999; Luhabe 2004; Iheduru 2004 and Marais 2011). The

⁴ The Pondos are part of the Xhosas, one of the nine major tribal groups of blacks from Eastern Cape. Cargill saw their impoverishment as sugar cane cutters in Natal where she grew up but uses the term Pondo to generalise the plight of blacks. The Afrikaners are a group of white people who speak Afrikaans, other whites in South Africa speak the English language.

former President Mbeki (the main architect of BEE) stated clearly the importance of government assisting the formation of a black middle class (Mbeki 1999:1-3). He wrote that:

“The struggle against racism must include the objective of creating a black bourgeoisie. The government must come to the aid of those among the black people who might require such aid in order to become entrepreneurs.”

The growth of the middle class was expected to bridge the massive wealth and economic gap inherited from apartheid, erode the industrial colour bar, allow blacks to become ‘custodians of black capital’ and act as allies of the government against the white race that had economic control (Sidiripoulos 1993; Luhabe 2004:66; Iheduru 2004:25). Marais calls the middle class the business elite class and pointed out that:

“--having business elite on top would also be a huge boon, not only for the ANC as an organisation, but also to individuals within it.” (Marais: 2011:140)

For him the ANC’s quest for building the business elite made the party not to object to the conglomerates’ restructuring and disinvestment from South Africa. It was expected that the black bourgeoisie would finally overtake a number of white bourgeoisies in the country as more blacks make their entry in business. Marais continues to state that:

“If large South African corporations shifted parts of their operations abroad in the context of BEE drivea black capitalist class could be assembled more rapidly in the abandoned space.” (Marais 2011:140-141)

The focus on the middle class stems from the general belief that it is this group that determines the rate at which innovative and progressive ideas are introduced to society to initiate development (Business Map 2005:15). The assumption is also that this class has the ability to boost the economy through increase in demand (purchasing power) and to bring about both political and economic stability (Burton and Hawthorne 2007:6). The class’ growth is an indicator of social justice and an equitable distribution of economic resources (Melber 2013:116).

There has not been a clear definition of the term middle class or bourgeoisie or the elite business class by those who wrote about it or the ANC itself. Generally, two approaches are used in determining the middle class in a given society; the statistical and the consumption approaches. The statistical approach selects households that fall in the 'actual middle' of the spread of household incomes in a country. The consumption approach chooses an interval of per capita household income that indicates some conception of relative affluence often associated with certain patterns of expenditure and possessions (Visage 2013:1). Although the income intervals may differ between developed and developing countries, using the 2008 South Africa's household survey, Visage identifies three groups that fall in the middle class. The first is those whose income earning falls between R1520 (£116) and R4560 (£350) per month, and the second is a relatively affluent middle class constituted by those earning between R5600 (£430) and R40000 (£3076) (Visage 2013:3).⁵ The two groups each account for 31 per cent of the population. These, however, do not appear to be the middle class that Mbeki was talking about as a group that would have the ability to afford their daily consumption and leave them with enough income to engage in business. Visage identifies the third group as the elite - those earning more than R40000 (£3076) a month. This accounted for only 4 per cent of the population but the majority of this group were whites (60 per cent).

Mbeki (2003:1) has alternatively used the term black bourgeoisie or entrepreneurial bourgeoisie. In its original usage in France, the term stood for the group between the feudal lords and the peasants which was made up of city dwellers who became artisans engaged in business and were important for the economic growth that was achieved in the 18th century. According to classic Marxism, the term developed to mean the owners of the means of production, as opposed to the workers (the proletariat) and the peasants.

⁵ There is lack of consistent in the literature on how much daily income a middle class earns. Melber (2013) puts the daily income amount that allows for a lifestyle or social status that qualifies a person to be regarded as a middle class in a range of \$2 to \$10.

The challenge that arises from the above is how the BEE policy can produce the bourgeoisie class. As Lucky (2011) and Obaji and Olugu (2014) said, the role of the government cannot be ignored in stimulating both the demand and supply of entrepreneurs. Demand can be stimulated by the government employing tax incentives, start-up grants, bilateral and multilateral international agreements, privatisation and promotion of competition that expand both domestic and overseas business opportunity. On the supply side, government is required to offer support for business in terms of education and training, protection of intellectual property, stimulating entrepreneurial culture and establishing institutions that help entrepreneurs in both start-up and established enterprises.

Both the Generic Score Card which accompanies the B-BBEE Act and the Score Card for the Mining Charter included clauses on entrepreneurial development. These require the white and foreign-owned companies to promote entrepreneurship and skill development of blacks in the mining sector. One would have expected that the government would have its own strategies for attracting and mentoring those blacks who are ready to take entrepreneurial risks in the mining industry and identify incentives that may apply exclusively to them.

The strong emphasis on growing the black middle class under the BEE policy has been criticised by Duma Gqubule (2005:5-6) who says it confines the majority of the black population (which is still very poor) to the status of spectators who celebrate the success of others who benefit from the policy. In the First National Bank Report (2006:12), concentration on the middle class has resulted in overshadowing the efforts of eradicating poverty, creating employment and enhancing economic growth. Emphasis on the middle class resulted in larger income disparities within the black community itself.

The elitist bias of the BEE policy and growing inequality is, according to Saki Macozoma who is one of ANC stalwart, something to be expected under capitalism. He states that:

“--while many critics of BEE accept this imperative (de-racializing the South African economy) they also argue that the process has elitist consequences. They suggest that BEE does not alleviate poverty, but enriches a few. What did they expect? Where have you seen a capitalist system producing socialist results?” (Macozoma 2007:177)

From the above, it seems that the expectations of what economic maladies the BEE policy can cure in the economy are extensive. Saki Macozoma questions the ability of the policy to cure a lot of economic maladies. Economic wisdom tells us that issues of poverty alleviation and bridging income gaps will not depend only on BEE policy, but rather on how the economy grooms successful entrepreneurs, employs much appropriate technology, creates more jobs and how the government employs equitable policies. Such issues fall under normal government functions, irrespective of whether there is BEE policy or not. The RDP that was later replaced by GEAR and other policies that followed were also concerned with poverty eradication.

Another justification for the BEE policy was according to Iheduru (2004:25), the need to deal with market failures. He argued that apartheid policies covered vast issues that included land ownership, education, employment, business ownership and social and economic life in general. Apartheid policies created market distortions and barriers against blacks. Thus, without the discriminatory laws in education, blacks would have obtained good education, acquired good skills and jobs. Those who would have justified their productivity would have climbed the job market ladder. Those with land would have obtained land titles that would have helped them as collaterals to get finance and other business contracts or used their land to develop their farming skills and produce more to earn incomes. Restrictive business laws for blacks prevented them from developing their entrepreneurial skills. He contends that the correction of such market failures could not be left under the whims of the market system, but required government direct intervention. To leave the status quo would have been to accept the continuity of racial stereo-types that had emerged where whites are regarded as superior and blacks as inferior. It is thus that Chapter Seven of this study explores the kinds of impediments blacks face in the mining industry.

The three justifications for BEE discussed above need to be related to the broader arguments for government economic intervention. First, government economic intervention under the free market system is acceptable if it addresses market failures which normally arise from normal market operations. The aim here is to enhance market performance (Stiglitz 1993, 1988; 1996, 2010; Tangri 1999; Samuleson and Nordhaus 1989; Lipsey 1989; Mohir and Fourie 1995:454 and Blundell and Robison 2000). Second, even in market economies, government economic intervention has been applied to deal with past economic injustices arising from slavery, colonialism or racial discrimination (George and West 1996; Bergman 1996; Tomasson, Crosby and Herzberger 1996; Herbert 1998; Uche 2011; Adejugbe 1984; Iwuagwu 2009). Economic empowerment policies fall in this category and thus may call for both political and economic decisions. In apartheid South Africa, the market distortions and economic imbalances were a result of deliberate government's racist policies, as explained earlier. It argued in this thesis that addressing such failures might call for more instruments than those directly applied to market enhancing purposes. Scholars have compared South Africa's BEE policy with that of Malaysia (Cargill 2010; Ponte, Roberts and van Sitter 2006 and Mandla 2006). Chapter Three of this thesis explores these contrasts with reference to the USA, Malaysia and Nigeria.

Third, government economic intervention is discussed in terms of promoting rapid industrialisation and economic transformation. The economic growth in general has seen different models of success. In this thesis, the rapid industrialisation of Asian countries in particular Japan is considered. The Japanese government directly influenced the allocation of resources, selected which sectors to grow, which companies to support or even which production mix were important to take the economy forward. Success has been influenced by the government's creating of public institutions for planning and enforcement, control over finance, maintaining co-operation with business groups and stimulating entrepreneurial talent by using incentives and other support mechanisms but also disincentives where necessary. In short, the Japanese government went beyond market enhancement to market intrusion (Rhee 1994; Lall 1996; Yu 1997; Wade 2004; Kohl 2004; Kaplan 1972). The experience of Japan is directly related to BEE policy's aim of promoting black

bourgeoisie or entrepreneurs as a means of transforming and de-racializing the South African economy. It is for this reason that chapter three details the above three forms of government economic intervention and gives specific examples of Japan and to draw more lessons and also make pertinent inferences.

A second set of literature focuses on why white and foreign owned companies accepted the BEE policy (Iheduru 2004, 2008; Dansereau 2005; Burton and Hawthorne 2007; Sartorius and Botha 2008; Marais 2011; Capps 2012; Lynch 2012). Iheduru (2008:338), referring to the MPRDA and the Mining Charter in particular, argues that whites accepted the policy for their own self-interest or profit motives and quest to control resources worldwide. Iheduru pointed out that globalisation exerts tremendous competitive pressure on corporations to beat other firms in order to capture market shares, appease shareholders and control mineral resource. In that case firms make fateful compromises to accept and comply with interventionist regulations provided their profits and other interests are not compromised. It is therefore “simple strategic calculations that lead them to fateful compromises.” (Iheduru (2008: 349).

Capps (2012:217) says that the BEE policies and, in particular, the MPRDA and the Mining Charter were designed to eliminate the barriers to investment and did not deny private ownership. The BEE policies thus protect capitalist interests and allow the conglomerates to open up for competitive entry of global and local players (including black -owned companies) (Lynch 2012:548, 549). According to Sartorius and Botha (2008), white and foreign-owned businesses, especially those that rely on government tenders and contracts, accept the BEE policy, because it allows them to exploit business opportunities provided by the government sector.

The acceptance of BEE policy by conglomerates is seen as an expedient strategy to appease the possible rise of nationalisation sentiments (Marais 2011.140-141) and which threatens the business community, its profits and wealth guarantees (Dansereau 2005:56). Nationalisation had been the ANC’s basic policy since its 1955 Freedom Charter, but this changed course as the party embraced the free market

forces ideologies when it took over government. The white conglomerates also accepted the policy for the sake of peace and security of the country. Given the country's strong labour union movements and civil society, white conglomerates feared that non-compliance might trigger trade union actions that would disrupt businesses and fuel political instability. The understanding appears to have been that turmoil would risk investment and negatively affect the profit making process (Iheduru 2004:25-26; Burton and Hawthorne 2007:6).

The acceptance of the BEE policy for Ntim and Soobaroyen (2012:123) is because it forms part of Corporate Social Responsibility (CSR) which white and foreign companies in South Africa have voluntarily accepted. They mention the same seven elements of BEE compliance as those indicated in BEE policy documents⁶. The compliance to these elements are seen as part of CSR because the compliance of the elements are not legally binding. I differ with their thinking, because the BEE policy in South Africa goes beyond the CSR areas in particular when it comes to the setting of equity targets to be given to blacks and enforceable through licensing. The elements are clearly stated in the policy documents. (For the elaboration of the elements see section 2.5.2 of this thesis). The issues of corporate social responsibility in the mining sector were also highlighted by Hammann and Kapelus (2004) in the context of Southern Africa.

The third set of literature considers the implementation of the BEE policy and its outcome. The application is discussed in terms of stages or phases, and the outcomes in terms of beneficiaries to the policy, challenges and impediments experienced, and unintended consequences that have arisen. These effects are rent seeking and corruption. Different terminologies and time demarcations have been used to describe the phases. There is however, a general agreement that the implementation has gone through three broad phases (Hirsh 2005; Roberts and van Sitter 2006; Southall 2007; Acemoglu et.al 2007; Jack 2007; Nattrass and Seeking 2010; Capps 2012). The three phases are best described by Southall. The first phase started before

⁶ The elements include corporate social investments, equity ownership, employment equity, enterprise development, management control, preferential procurement and skills development.

the 1994 democratic elections and ended with the Asian financial crisis of 1997-1998. In this phase, there was no formal economic empowerment policy, and hence the reference to the “uncoordinated phase” or “the private sector driven phase” Southall (2007:76).

Both the conglomerates and the government made efforts to incorporate blacks in the mainstream of the economy. As noted by Hirsh (2005:105), the conglomerates started this process by unbundling their non-core assets in early 1990s. Some were sold among themselves and a small proportion to blacks. Blacks had acquired shares in telecommunication, media, and entertainment and financial services to the value of R 20 billion (£153 million) (10 per cent of the JSE), but this was reduced to a mere R5 billion (£38million) by the end of 1999 when the JSE crashed because of the Asian crisis (Capps 2012:320). The Asian financial crisis thus destroyed almost all the gains of black economic empowerment.

In its quest to incorporate blacks in the economy, at this stage, according to Hirsh (2005:105) and Southall (2006a: 6), the government employed three measures. First, government used the partially privatised State-owned Enterprises (SOEs), that is, Transnet, Denel, Telekom and Eskom and other important public corporations, in order to place few blacks mostly connected to the ANC in top management positions. Second, government used its procurement facilities to grant black-owned enterprises government tenders. Third the ANC itself created business enterprises (for more in this, see section 2.2 of the thesis).

It is also in this stage that government concentrated on changing apartheid legislations in order for the country to operate under a racially free environment and bringing harmony between the people who were affected by murders and other atrocities that were committed during apartheid (Taylor 2007: 161-163).

This early phase of black economic empowerment was faulted for a lack of a clear formal policy. This was considered as one of the reason for a slow pace of inclusion of blacks in the main stream of the economy. Other criticisms were the limited

number of beneficiaries and cronyism as most of those benefited are connected to the ANC government (Sunday Times 26/6/2005; Khehla and Reddy 2006; Mbeki 2007; Gqubule 2006, Duncan 1996; Cargill 2010). Thus the Black Management Forum in November 1997 called on the government to clarify the nature of empowerment, the standards to be followed and the benchmark for its implementation. This led to the formation of the BEE Commission in 1998 (BEE Commission 2001).

Another criticism of this phase has been the concentration on blacks' acquiring shares from existing companies and not establishing any new ventures. This has made the entire empowerment process, according to Cargill (2010: 192), look like the redistribution of the spoils of war among the ANC victors. For Cargill, it would have been more productive if the capital used to buy shares in existing companies was used to promote new business ventures, fight poverty, and invest in low income housing or land redistribution.

The second phase started in 1998 with the establishment of the BEE Commission and ends in 2004 with the coming into effect of the MPRDA, the Mining Charter and the B-BBEE Act (Tangri and Southall 2008:704-707). According to Capps (2012:320), this is the period in which efforts to come up with a formal policy were taken under President Mbeki's leadership, resulting in the state adopting an interventionist role. The period has been referred to as 'the big push phase' or the 'assertive phase' or the 'institutionalisation phase' (Acemoglu et.al 2007:10; Nattrass and Seeking 2010). The government was called upon to develop a formal economic policy (Capps 2012:320), and hence the establishing of the BEE Commission in 1998. This Commission produced its report in 2001 which proposed the model in which it should take place (BEE Commission 2001). This further led to the passing of the MPRDA, the Mining Charter and the Score Card for the Mining Industry both in 2002 followed by the B-BBEE Act in 2003. The B.BBEE Act was accompanied by the Generic Score Card and the Codes of Good Practice which explains how the white and foreign-owned companies are to comply with the Acts. The evolution of these policies is both elaborated further in Chapter Two.

The third phase, which started with the coming into force of the MPRDA, Mining Charter and B-BBEE Act in 2004, is on-going. This study specifically focuses on this phase. It is sub-divided into two periods. The first sub period runs from 2004 to 2009, the period by which the mining companies were expected to have completed the conversion process from the old-order rights to new-order rights. This can be regarded as the time of BEE euphoria in which many BEE deals were concluded. The literature focused on assessing the compliance of BEE policy and, in particular, the value and number of BEE deals concluded (Empowerdex 2004, 2009; Business Map 2005; South Africa Institute of Race Relations 2010/2011; Ernest and Young 2011). It is during this period that the Generic Score Card and Codes of Good Practice were drafted with the final version in 2007 (DTI 2004, 2005, 2007a, 2007b, 2007c). Attention then was on the interpretation of the Generic Scorecards and the Codes of Good Practice and its implications for compliance by the white and foreign-owned companies (Balshaw and Goldberg 2005, 2007). But the existence of two different scorecards, one for the mining industry (2002) and the Generic Score Card for the economy at large (2007), has contributed to misinterpretations and confusion as to what elements the mining companies have to comply with and which not to (Pinnock and Buttler 2005; Peter Leon partner, Webbel Wentel Bowans 2007).

In contrast to the early phase where critics pointed to few beneficiaries, there has been an increase in the number beneficiaries. This can be deduced from a number of directories on BEE beneficiaries in the various sectors (Research Channel Africa 2006, 2008a, 2008b; DME 2008b; DMR 2010c, 2010j). The rapid growth in the number of BEE deals and values (968 deals with value of R335.3 billion or £22.3 billion between 2004 and 2009) for the economy at large was an indication that the policy had opened more space for black participation (South Africa Institute of Race Relations 2010/2011:351). The broadened nature was clearly noted by Southall who said:

“BEE deals, large and small are being concluded over a wide array of sectors, by a various array of BEE entities (owned variously by individuals, managers, employees, investment trusts and unions) through a variety of devices (outright purchase, loan

purchase, joint ventures with established firms, buy out and partnerships).” (Southall 2007:79)

Patel and Graham (2013:203) based on BEE deals between 2004 and 2006 also highlighted a broad nature of the beneficiaries that included employees, women, disability groups, development/education trusts and community organisations through their trusts. Sartorius and Botha (2008:440) group BEE beneficiaries into two main categories: internal partners and external partners. Internal partners include black employees, managers or directors. External partners do not have direct control but benefit from the dividends and are divided into two: those having their own businesses (entrepreneurs, suppliers and business associates and investment holding companies) and broad-based groups (management companies, community and development trusts, trade unions and business association funds). The findings in chapter five of this thesis indicate that majority of BEE beneficiaries fall in this group.

It is in this period that, for the first time in the country’s economic history black, billionaires and millionaires appeared. Most of them were concentrated in the mining industry (Paradzi and Kulula 2007:25; Business Map Foundation 2005:15). For example, by 2011, Patrice Motsepe, one of the black mining moguls, was reported to have R22.9 billion (£2 billion) worth of investments, while Cyril Ramaphosa, a black politician-turned-entrepreneur (now in politics again), had R2.2 billion (£2 million) in the Johannesburg Stock Exchange (JSE) listed companies (Southall 2013: 262-266).

The second sub period runs from 2009 (when the DMR in particular published the Mining Charter Impact Assessment) to the present. This is a period of taking stock of the success (or lack of) of the BEE policy implementation process, in particular, the MPRDA and Mining Charter. The issues that became central during this period were and still are on low compliance levels, fronting and limited returns accruing to BEE beneficiaries. Although the issue of measuring compliance is important in order to gauge the progress of the policy, those who tried to do so came up with different answers. Using the JSE market capitalisation which stood at R1.8 trillion

(£163billion) in 2009, the DMR indicated that the equity ownership target were low and reached only 9 per cent, instead of 15 per cent, as was expected. For the same period, KIO (2010) estimated BEE equity ownership at 5.27 per cent. This sparked a confrontation between the DMR and the South African Chamber of mines, which said that, actually, the white and foreign-owned companies had met their targets. However the above studies did not provide details of the nature of BEE deals that had emerged. This is the debate which is still going between stakeholders.⁷

This thesis explores the source of disparities on compliance levels and found several reasons. These include the fact that most of these studies use market capitalisation of the JSE companies to estimate equity transferred to blacks. JSE data is preferred, because it is readily available, but there are some limitations of using such data. First, the data give a general view based on asset value which changes from day to day depending on how the markets perform. Second, those mining companies that are not part of the JSE are excluded. Third, the data does not reveal much on how individual white and foreign-owned companies have complied, which black partners they have taken, and what kind of BEE deals have been concluded. For these reasons, this study has gone further by exploring the actual BEE transactions entered into by individual white and foreign-owned companies with their black counterparts. To do this, the research used a sample of 72 companies that include JSE and non-JSE and covered companies operating in all mineral categories. It is argued here that this has given a more detailed picture on BEE deals concluded in the industry, identified the empowerment beneficiaries by name and type (whether they are consortiums, communities, groups or individuals or companies) and revealed more on strategies and conditions used in concluding deals. To explore black control of mining assets, the same sample was used to extract data for directors (in total 468) and managers (226) represented in the mining companies as indicated earlier. No other study known has covered this. The findings of this exercise are revealed in chapter five of the thesis.

⁷ The most recent spat between the DME and the Chamber of Mines was in May 2015 over the Mining Charter targets for 2014. For details see Mining News of 15 May 2015 and the media release by the Chamber of Mines on 27 May 2015 titled “Putting South Africa First”.

The literature also turned its focus on impediments that blacks experience, namely lack of funding and strategies used by white and foreign companies to fund deals and the overall impact on BEE beneficiaries. Most literature pointed to the fact that blacks lacked their own capital when they started entering into BEE deals (Levitt 2005; Business Map 2005; Southall 2006, 2007; Engelbrecht 2007; Wendy and Bull 2007; DME 2009b; Cargill 2010). Cargill indicates this handicap as was best captured by Laurie Dippenaar's statement that:

"--trying to sell equity to those with no capital is like building a house from the fourth floor, miracle making indeed." (Cargill 2010:47)

In other words, without having their own capital, there was a weak base for blacks to progress in business. Southall (2007:74-75) says that the reasons are historical and are founded on the apartheid policies.

It is black people's lack of own funds that in part explains the limited number of beneficiaries highlighted mostly in the first BEE phase (Business Map (2005:15). To enter the mining industry, blacks depend on financial assistance either from the state financial institutions, other private financial institutions (notably banks) or the vendors (white and foreign-owned companies). The vendors, however, do not just pick anybody but have often preferred those with proven business experience, have their mine assets and/or are politically connected. This was meant to safeguard their investments and to get more business opportunities from the government. Once the few who succeed in concluding BEE deals manage to build up enough returns and get more business experience, they continue to attract more finance and get easily accepted by other white and foreign-owned companies that are under pressure to conclude empowerment transactions.

In the paucity of start-up capital or finance, especially from the private enterprise, government's financial institutions are called upon to shore up the BEE deals. As early as 2006, the Tiso Group News (2006:2) indicated that meeting the 26 per cent black ownership target by 2014 would require the country to be able to raise R180

billion or £15billion (with the total value estimated at R760billion or £69billion at the time). South Africa's four big banks, the First Rand, Nedbank, Absa and Standard Bank combined together did not have the capacity to finance BEE deals of that amount. Much newer estimates by the DMR (2009b) and KIO (2010) are R 1.8 trillion (or £163billion) and R 2 trillion (or £181billion), respectively. This means that, in order to meet the BEE targets of 26 per cent, one needs R 280 billion (or £25billion) or R 300 billion (or £27billion), respectively, and this is difficult.

Cargill (2010: 6-7) suggests that the government should intervene to mobilise funds. She takes us back to history and gives an example of how the apartheid regime under the National Party government mobilised savings to support its Afrikaner empowerment programme known as the Afrikaner Broederbond. Sanlam, an insurance company, was established in 1915 to fund the institutions with the motto "Born of the Volk to serve the Volk". The word "volk", is the Afrikaner version of the English word, 'folk', referred to the Afrikaners who were the targeted beneficiaries. This is in contrast to the BEE policy era which has not been followed by a significant government effort to raise enough capital to help black business. The government still relies on its traditional public financial institutions⁸ and a growing number of private financial institutions in the midst of growing number of aspiring black entrepreneurs and shareholders in the mining industry. The government should find means to help blacks to source funds from the global markets.

On strategies that white and foreign-owned companies use to fund BEE deals, the central issue is the accumulation of debts which the BEE beneficiaries are experiencing (Mbethe 2004; Pinnock and Buttler 2005; Levitt 2005, Bull 2007; Buttler 2007; Engelbrecht 2007; Botha 2008; DME 2009c; Cargill 2010; Daniels 2010; Cliffe Dekker Hofmeyer (ND)). Two funding mechanisms specifically highlighted are third party and vendor financing. Third party financing involves borrowing from a third party, normally a bank. This requires security or collateral

⁸ The traditional financial institutions include the Industrial Development Corporation (IDC), Development Bank of South Africa (DBSA), Public Investment Commission (PIC) and few of the other new ones which have sprung in the democratic South Africa include Khula, the National Empowerment Fund (NEF), Ntsika, Enterprise Promotion Agency, Isibaya and Umsobomvu Funds, Brenttrust initiatives and Msanzi Bank.

which is provided in the form of shares, property or some form of liquid assets. The financier then provides funds at a certain rate of interest to cover for risks or the cost of capital (Bull 2007:141). Vendor finance involves the owner of the asset providing funding for the buyer to acquire assets in the vendor's own company.

In the absence of collateral (and the government not offering them guarantee), blacks are forced to resort to the vendors (white and foreign-owned companies), who then become guarantors of the BEE beneficiaries and arrange loans. Often, vendors establish special purpose vehicles (SPVs) which are separate companies used for BEE equity transactions and allow black shareholders to be part of directorship (Bull 2007:142). Thus, SPVs allow blacks to own shares and have control in white and foreign-owned companies against a loan that is guaranteed by the vendor. The practice in South Africa has been for the vendor to acquire some shares in the black-owned company with which it has entered into a BEE deal. This is mainly to safeguard its interests. This system does not differ much from how the mining houses operated before the unbundling process (see section 2.2 of this thesis).

According to Cargill (2010:36), the first SPVs were funded by willing financial institutions which banked on a good debt return, along with an equity upside (share appreciating in value). In this way, black investors would be allocated shares without having to put money down to pay for them in the first place in the expectation that they would be redeemed later. The ability of redeeming the shares depends on a firm's good performance. If the firm gets enhanced returns and pay dividends, the black shareholders use the dividends to repay the debts (redeem shares). However, if the market conditions deteriorate, the share value falls (the assets loses value) and no or limited dividends are paid. Black shareholders then lose the ability to pay interest and to redeem shares. Debts accumulate and equity ownership gets depleted. The financier takes the losses as well. To recover from debt, the BEE beneficiary may be forced to sell shares back to vendors and often at much lower prices. This is what happened to one such beneficiary, NAIL, in 1998 where Anglo America Corporation had to buy back its shares. This brought changes in the restructuring of the SPVs, where the vendors still became guarantors of the loans but ring-fenced the SPVs to

ensure that they do not lose their BEE status and use lock-in clause that prevents buyer from selling shares for a specified period. This is permitted in the Mining Charter. In short, the lock-in clause has contributed to continued indebtedness of BEE investors.

The SPV funding model is criticised by Gqubule (2006:120-121), Buttler (2007) and the DMR (2009c:18), who all indicate that, despite facilitating black control, the model is failing as a mechanism to transfer equity ownership to blacks. This is because actual ownership of mining assets is tied to loan agreements and a large portion of empowerment deals is paper wealth (Buttler 2007:19).

Black people's lack of capital has not only limited their capacity to fully participate in equity ownership, but has also led to the problem of fronting and cronyism. Fronting occurs when a black person or company is invited to sign a BEE deal by a white or foreign-owned company. After signing a deal, the black-owned company collects "gifts" and then ceases to engage in day to day activities and disappears from the scene (Gothenburg University 2001:93). In return, a white or foreign-owned company gets an artificial black empowerment profile and is then able to produce evidence that it has a black partner. The term, 'rent-a-blackie', is used to refer to this practice. Three main reasons explain why fronting occurs. First, empowerment is seen as a pure cost as it involves capital and where to invest and with who is based on returns anticipated and other business relationships. Secondly, there is pressure on the white and foreign-owned companies to be compliant, so they hunt for black people who can accept to mask them. Thirdly, it is hard to find professional black people and entrepreneurs. Fronting will therefore happen as long as companies can get away with it (ibid).⁹ Randal uses a phrase "white foes and black masks" to explain the issue of fronting, implying that black owners and managers are just hired for "their smiling faces to appear in corporate brochures" in order for the white companies to be seen as compliant but leaving blacks dis-empowered. At the end,

⁹ As explained in section 2.4 of this thesis, the amendment of the B-BBEE act in 2012 was to address the fronting problems in the BEE implementation process.

BEE policy compliance has been just a window dressing. It is this that tarnishes the BEE policy (Randal 1996:622).

Another source of discomfort in this phase is meagre return or negative growth. This, together with the continued existence of fronting, resulted in calls for the amendment of the Acts. These issues are expanded upon in section 2.4 of this thesis.

In addition to all the criticisms noted above, the South African government, as noted by Tangri and Southall (2008:700), has been hesitant, restricting itself beyond market forces, because it tried to balance the demands for de-racialization of the economy with the perceived need for domestic and foreign capital. While emphasizing the significance of transferring economic benefits to those once marginalised, the government has mainly advocated economic growth and the use of market friendly policies. The question that can be asked here is whether the transferring of equity from incumbent mining companies to new comers (blacks) can succeed under market forces?

Cronyism or political patronage or ‘comrade capitalism’ has been part of BEE deals according to many BEE critics (Duncan 1996; Hirsh 2005; Khela and Reddy 2007; Mbeki M 2007; Southall 2007; Mathe 2008; Cargill 2010). Cronies or ‘political comrades’ are those who have strong connections to the ANC government. These include what they call the “Robben Islanders” that is, liberation struggle veterans who had been imprisoned on Robben Island; the ANC cadres that were in exile and; those who joined the corporate world before the official coming of the B-BBEE policy (Duncan 1996). These are the people who have benefited from business deals over and over again. Mathe (2008) refers to those beneficiaries who became rich from the process as ‘fat cats’. To Khehla and Reddy (2007), cronyism has been enhanced by white-owned companies looking for bankable and connected blacks who are closely associated with the ANC. The aim has been to make these cadres pave the ways to lucrative state contracts.

Southall (2007:80) expected political patronage to arise due to the fact that the economy was controlled by white capitalism. He wrote:

“Given the centrality of political leverage to the promotion of BEE and the structure of the South African economy black capitalism and black capitalists are likely to tend towards “cronyism” and “compradorism” as weberianism and patriotism.”

Cargill (2010:93-95) says even the ANC itself has become one of the BEE beneficiaries. It has created its own investment arm, the Chancellor House, which benefits from state contracts. The ANC’s investments are also mentioned by Southall (2006a: 6), as indicated earlier and also said by Beresford (2015: 2-7), who states that the ANC party funds itself by creating business fronts and then use them to source state contracts. He defines crony capitalism as the use of connections to public authority to facilitate private capitalist accumulation. He distinguishes this from ‘spoils consumption’ which he defines as the use of connections to public resources for private ends or the direct use and abuse of public office to consume and distribute the spoils of the state along private channels. He argues that crony capitalism should be seen as a process of class formation in post-colonial Africa and resembles the kind of capital accumulation one can witness in the economies of East Asian tigers, post-Soviet Russia and the oligarchic politics evident in Western countries where private capitalist lobbyists wield huge influence over public officials (ibid). The critical element here is not the actual practice of patronage but the manner in which this is harnessed for national development.

Kelsall (2013:13), who refers to crony capitalism as ‘neo-patrimonialism’ or ‘clientelism’, has similar ideas. He argues that this should not be seen as an obstacle to development. In reference to Asian Tigers, he shows the importance of strong political leadership which is able to channel economic resources to their cronies and produce enough capital for national development. He says:

“Key to explaining why some of these states performed better than the others was the way in which clientelism and rent seeking were organised. Specifically, almost all the better performing states had been able to centralise the management of economic rents and orient it to the long term, a feat which was achieved with the help of strong, visionary leaders, constrained democracy, top down client relations and confident and competent economic technocrats.” (Kelsall 2013:16-17)

Cronyism is explained by Booth and Mutebi (2012:381-2) as ‘developmental patriamonialism’ and is seen as the key to Rwanda’s success under Kagame. They say that developmental patriamonialism is attained “when the ruling elite acquires an interest in and capacity for, managing economic rents in a centralised way with a view of enlarging their own and others income in the long run.” They argue that developmental patriamonialism is more likely to be a bridge to achieving economic transformation and social development than the one suggested by orthodox advocates of good governance who believe in democratic leadership and are against corrupt practices. Explaining the same idea, Khan and Gray (2005:21) call this ‘primitive accumulation’ They defined this as the non-market transfer of assets which emerge before a capitalist economy is advanced or developed (facing poor and limited resource markets and low productivity of productive assets) and the state has poor fiscal capacity. The non-market transfers include taxes, subsidies, compulsory purchase orders (or outright appropriations); zoning and planning permissions, privileged access of land and state price fixing. When the economies are not developed, such non-market transfers are based not on voluntary contracts negotiated by private individuals but are better done through political negotiations in order to allow privileged acquisition of assets by some individuals over others (Khan and Gray 2005:22). They say this is what made the Asian Tigers succeed. Their governments created strong institutions which enabled them to selectively allocate benefits to maximise economic returns for both its clients and the governments themselves (Khan and Gray 2005:15). The problem is that such acts trigger corruption which could be difficult to avoid.

Although cronyism seems to be the norm in early stages capitalism, the bad part is that cronyism involves economic benefits and naturally that breeds rent seeking behaviour and corruption. Second, the ability of any political leadership to avoid meritocracy and appropriately choose competent and competitive clients who will ensure economic efficiency is questioned. Thirdly, when cronyic tendencies are interrogated in the society, animosities might result. Thus, it may be difficult for developing countries like South Africa which has strong opposition parties and

robust civil society to use cronyism for capital accumulation, because of internal resistance and external pressures to suppress cronyic tendencies.

The BEE literature also covered the absence of government institutions to guide, oversee and evaluate the implementation process (Ryan 2009/2010; Acemoglu et al. 2007 and Ponte, Roberts and Van Sittert 2006). Ponte, Roberts and Van Sittert (2006:49-50) point to the fact that the government has resorted to use of private consultants, auditors and certifying agencies to check whether or not white and foreign-owned companies are complying. These writers question the ability of private assessors to bear the responsibility for the policy scrutiny, as their aim is just to reap financial returns (ibid). This has resulted in the ‘managerialisation’ of the BEE policy.

The use of private consultants has limited the government’s ability to gauge how the overall policy objectives are met, get proper and genuine feedback on problems being encountered which is important to finding solutions. To Ryan (2009/2010:3), private assessors may lack the motivation to hunt for companies that do not comply, may be loyal to those customers who pay them better and fail to scrutinise every item under compliance and just dish out compliance certificates in order to enhance their businesses. Acemoglu et al. (2007:2) say the danger of commercialising such important functions of the government is that, policy makers will not get a true picture of the level of compliance and problems encountered. They suggest that the government has to create its own institutions that would properly evaluate, identify problem, seek co-operation with all stake holders to find solutions and ensure that the economic empowerment policy succeeds.¹⁰

The literature referred to above is not exhaustive in terms of challenges and problems faced by black entrepreneurs in the extractive industry. Studies done in other African countries pointed to many other challenges in addition to lack of finance. In Ghana, Campbell (2013: 145-147) argues that small scale and artisanal miners do not only

¹⁰ Note the proposed new changes in the B-BBEE Amendment Bill of 2012 which calls for the establishment of a B-BBEE Verification Professional Regulator (Section 4.5 of the bill).

suffer in terms of lack of finance (as they rely on informal financial channels), but also in terms of technology, bureaucratic red tape in obtaining licenses and difficulties in accessing land in mineral rich areas. The government prefers to offer extensive incentives and large chunks of lands to large scale miners, and it is often not strange for the government to shed-off portions once allocated to artisanal and small scale miners to large scale miners. Spiegel (2015:545) also observes how licensing has been used in Zimbabwe against the small scale and artisanal miners in mineral rich areas such as the Great Dyke. Licensing has become a critical element in South Africa, because it is a point of entry for blacks in the mining sector.

Based on the interviews that this study has conducted, it is clear that blacks entering in the mining industry face many challenges that limit their capacities of better exploiting the available opportunities. Of course, in addition to the list is lack of finance but they also face difficulties in accessing land in mineral rich areas, obtaining relevant data on mining ventures to be purchased. Another problem is the lack of clear government policy direction to guide relationship between communities and consortium shareholders who seem to know less on how BEE transactions are conducted and that depend on 'lead partners.' These are those shareholders within the black society who seem to be more knowledgeable about shareholding and are political or business elites. Land ownership has been at the centre of the apartheid policy as explained in section 1.3 of this thesis. This has led to the government introducing policies to distribute land since 1994 (Hall 2010; Pringle 2013; Kloppers and Pienaar 2014).

According to Hall (2010:15), the BEE policy is aimed at dealing with historical injustice by the de-racialization of capital, human settlements and security of tenure. Transferring land assets to the poor and the promotion of small scale holder agriculture is at the centre of poverty reduction. The problems of access to land might be less for old mining companies who had land concessions negotiated during the apartheid era and some communities like the Bafokeng Nation that owns large tracks of land from which platinum is mined. They have taken advantage of their land ownership to become major shareholders and partners of white and foreign-

owned mining companies like Impala Platinum and Anglo Platinum (Kgosi Leruo Molotlegi 2013; Mnwana 2014).

Mining extraction activities involve land issues. The coming of the MPRDA meant that landowners ceased to own mineral resources under their land. Those that need to access minerals still have to negotiate with the land owners. This affects mainly black-owned companies in contrast to incumbent white-owned companies whose leases had been negotiated in the past. Moreover mining activities open up job and business opportunities in mine areas resulting in an influx of people. Increase in mineral activities has increased pressure on the land use (Rajak 2012) and has resulted in problems of encroachment and forced relocation (Farrell, Hamman and Mackres 2011). For example communities living close to Mohalagwena mine in the Limpopo Province had to be moved from their land to give way to mine expansion. It is questionable if the blacks entering in the mining industry are free from land access problems and have the ability to handle land issues. It was necessary for the study to explore further the challenges and problems encountered by mining companies in the process of BEE implementation. From the interviews conducted with executives of black-owned companies, blacks entering in the mining industry cannot easily access land in mineral rich areas. Interviews with government officials reveal that the government is downplaying this problem. However, land issues cannot be ignored by policy makers as these issues are at the centre of blacks accessing land in mineral rich areas, the relationship between mining companies and the communities who either own the land with mineral deposits or live closer to the mines. Chapter Seven of this thesis details the field-work findings on challenges that mining companies face in the industry.

From the literature above, it can be deduced that the BEE policy is part of the South African government economic intervention program in its economy. This is the economy where, in the racially repressive past, laws were used against blacks. It is acknowledged here that the ANC government has succeeded in scraping the apartheid laws, managed to negotiate with the white capital to transfer some economic assets to blacks, and used its regulatory power to introduce policies that

enforce the transfer of economic assets and the blacks' entry into all sectors of the economy including the mining industry which was one of the white capital's strongholds.

As indicated in earlier there are six broad elements that the white and foreign-owned companies are obliged to comply under the MPRDA and the Mining Charter. These include equity ownership, management and control, skills development, employment equity, enterprise development and preferential procurement. This thesis limits itself to investigating equity ownership and management and control to blacks in the South Africa's mining industry. Previous studies (DMR 2009c, KIO 2010) concentrated much on estimating equity ownership using data on market capitalisation of mining companies listed in the Johannesburg Stock Exchange (JSE). These studies did not cover much on issues of black control. As a result, blacks' control of mining industry is virtually unknown. Moreover the use of JSE data does not reveal much about compliance at company level to reveal the mining deals that were concluded by white and foreign-owned companies and their black counterparts. Besides, not all mining companies are listed in the JSE. It is argued here that exploring mining deals reveal more on the nature of compliance that has taken place within mining companies. To transfer equity to blacks, mining asset transactions (mining deals) started to be concluded in early 1990s. In order to get a clearer picture on deals concluded before and after the new mining regulations, the study covers mining deal transactions between 1990 and 2012 in all mining categories (platinum, diamond, gold, coal and ferrous and non-ferrous).

The literature also indicates that the entry of blacks in the industry has not been an easy ride. The lack capital, face difficulties in accessing land in mineral rich areas and export markets, and use poor technology. In addition, by virtue of having no previous experience in the mining industry as producers or owners, blacks lack knowledge on how to run mining ventures successfully. However, the ANC government has left black entrepreneurs to battle the white-racially biased market system. The first main argument that the study is making is that impediments that blacks face limit their success and survival in the industry. A mere substitution of

apartheid policies with new mineral regulations can never transfer mineral wealth from whites to blacks. The main suggestions the thesis is making is that the government of South Africa must deal with the barriers and challenges that black entrepreneurs face, selectively use incentives and other supporting mechanisms and promote the black investors to become strong players in the mining industry. Lessons should be drawn from similar policies elsewhere. From the USA's affirmative programs and Malaysia's economic empowerment programs the BEE policy makers should learn the importance of establishing institutions and supporting mechanisms. From Nigeria's indenisation programs they should learn the pitfalls from the implementation of the programs. The BEE policy makers in South Africa need also to draw lessons from Japan which selectively supported its local entrepreneurs, cooperated with the business groups until they were strong enough to break into world market. This is because the transfer of equity and attaining black control translates into promoting black entrepreneurs.

The literature above also indicates blacks are entering the industry at the time when, ironically, it is still white dominated in many ways. The second main argument is that ownership structure determines control in the mining industry. The rationale of the argument is that the ownership structure is still concentrated in the white hands; has cross shareholding and; financial institutions and families have significant control of mining assets. The low voting shares are also used and stringent terms and conditions are applied in the mining deal transactions. The unbundling that has occurred in the early 1990s did little to change the ownership structure. It is thus argued that the structure and the conditions limit the possibilities of attaining 40 per cent black representations on the board and top management of mining companies. The targets may be reached if the government deals with the limitations, support black entrepreneurs as suggested earlier and also use enforcement mechanism to ensure compliance of the MPRDA and Mining Charter.

The thesis adopts a political economic approach as it takes into account the historical perspectives of South Africa's social-economic and political realities. This enables the study to map a comprehensive sense of how the new mining regulations (the

MPRDA and the Mining Charter) have enabled the transfer of equity ownership, attainment of control and management to blacks. The thesis is informed by principal-agent-theory (or simply agency theory) to analyse BEE equity ownership, control and management. The theory goes back to early debates on shareholders-managers relations. Berle and Means (1932) observed that the ownership of US firms had become separated from management and control. Because of the separation managerial objectives (firm size, growth) may differ from owners objectives (profit maximisation). This thesis uses Berle and Means' agency theory to explain ownership variables (company shareholding and mining assets), mining control (board characteristics) and the management (management characteristics) variables to examine compliance of the MPRDA and the Mining Charter. Explanation of the theory is expanded more in Chapter Six of this thesis.

1.5 Objectives of the Study

The objectives of this study are:

1. To establish the extent to which the white and foreign-owned companies have complied with the MPRDA and the Mining Charter, particularly in terms of how much percentage of equity ownership has been transferred to blacks and how much management and control have been devolved. There are thus three main components to this objective: equity ownership, control (board representation) and management. These are central to the blacks' participation in the economy and the de-racialization of the economy in general.
2. To establish the extent to which the mining companies have qualified to be re-classified into black enterprises (where blacks own 50 plus 1 vote), black-empowered enterprises (with blacks having 25 plus 1 vote), black women enterprises and community or broad based enterprises (where these groups have 1 to 100 per cent shareholding). From the Mining Charter, it was stated that this was a measure of accessing blacks' participation in the mining industry. This was necessary, taking the fact that, before 1990, there was no single black-owned or controlled mining company in the industry. It was therefore important to gain an insight into the growth

of equity owned by blacks in the mining sector as required in the first objective but also to see what kind of black-owned companies had emerged.

The two objectives were considered together, as they are interlinked. Three different mechanisms were used to pursue the above objectives. First, the market capitalisation of the JSE mining companies was used to estimate the equity owned by blacks. This data was captured on 12 July 2011. Second, using a sample of 72 mining companies, BEE deals entered into by individual white and foreign-owned companies in all mineral categories were traced. In addition, the black beneficiaries and the share exchanges were identified. Over 100 companies were covered. Thirdly, using the same sample data on black representation on the boards and senior management of these companies was gathered and 468 board members and 226 senior management members were identified.

3. To establish the different strategies used by white, foreign and black-owned companies to enter into BEE deals. This would help one to understand the dynamics of BEE deals in particular how the incumbents (white and foreign-owned companies) chose their BEE partners.

4. To establish forces which facilitate or hinder the implementation of the MPRDA and the Mining Charter in the mining industry. Literature on the implementation of B-BBEE policy has focussed on the lack of funding, the mode of funding of BEE deals and lack of government support as main obstacles to black participation in equity ownership. It was important to reveal more on these or other challenges and find out how these affected mining companies. It was with this knowledge that one could come up with suggestions on how to improve BEE implementation in the country.

5. To establish the role of the government in the implementation of the MPRDA and the Mining Charter and what do the mining companies expect from the government Due to the fact that the B-BBEE policy is the outcome of the

government's intervention drive in its economy, it is only with this type of information that the government can adjust its implementation strategies.

To get answers for the third, fourth and fifth objectives, readings on companies were undertaken and literature on BEE in South Africa was conducted. This was followed by interviews with executives of white, foreign and black-owned companies, relevant government departments and other stakeholder. The information gathered is presented in Chapter Five, Six and Seven.

1.6 The Organisation of Chapters

In addition to this introductory Chapter, the study is composed of seven other Chapters. Chapter two discusses the evolution and codification of the B-BBEE policy in South Africa. First, it traces the policy process in the mining industry under the Department of Minerals and Energy. Second, the research focuses on the rest of the economy under the Department of Trade and Industry. The aim is to establish the basics of the B-BBEE policy, and show stakeholders that were involved and highlight the policy changes that have taken place overtime.

Chapter Three situates South Africa's B-BBEE policy in the broad context of government economic intervention. This Chapter examines, first, under what circumstances government economic intervention is justified under the free market system. Second, the Chapter considers the cases of government economic intervention in response to past economic imbalances created by previous policies. This is because the B-BBEE policy is a response to the racial economic imbalances created by the past apartheid policies. The focus here is on affirmative action in the USA, economic empowerment in Malaysia and indigenization in Nigeria. Special attention is paid to the institutions to implement the above policies, factors that contributed to their success, limitations and how the policy makers have dealt with problems and issues that emerged in the implementation process. Third, the Chapter analyses government economic intervention in support of rapid economic development and transformation as has been the case in East Asian countries in particular Japan. The Japanese government selectively intervened in its economy,

used incentives and other support mechanisms to earmark industries and companies which later managed to break into global markets. There is a lot for South Africa to learn from Japan's experience.

Chapter four provides details on how data for this study was gathered and analysed. Data for Chapters Five and Six was obtained from publicly accessed documents that include company annual reports, business directories and various government documents. Data for Chapter Seven was collected by conducting interviews with mining company executives, management and officials of relevant government departments. The interview questions were grouped into themes which facilitated the subsequent analysis. The main themes covered were licensing, BEE partnership, BEE compliance, BEE funding, the role of the government and the future of BEE policy.

Chapter Five analyses the extent of compliance with equity ownership. It first establishes how licensing has succeeded in enabling the entry of blacks in the mining industry by looking at the number of licenses issued to mining companies. To establish a general level of compliance and determine the percentage of the value of mining assets under black ownership data on market capitalisation of JSE mining companies (56 companies as of 11 July 2011) was used. Since market capitalisation gives a general view, the Chapter goes further and analyses the BEE mining deals concluded by the JSE listed and non-JSE mining companies in all the mining categories (ferrous and non-ferrous minerals, coal, platinum, gold, and diamond). Analysing these deals provides a more detailed picture of BEE compliance as it identifies which white and foreign-owned companies concluded deals and who were their black beneficiaries (individual persons, black-owned companies, consortiums, communities and Employee Share Ownership Programmes-ESOPs) and, most important, which mining assets were sold and which were kept as wholly owned. No other known study in South Africa has done this.

Chapter Six discusses the extent to which white and foreign-owned companies have passed on control and have taken black executives and managers within the mining

industry. Due to concentrated ownership and cross shareholding, the thesis takes a view that shareholding determines control. The Chapter starts by exploring literature on ownership and control in general and then relates this to South Africa's corporate structure. Then, data on 468 board members and 226 senior managers gathered on the same companies from secondary sources and is used to establish the degree of black representation. The preliminary argument is that black representation is considerable in companies that they hold majority shares.

Chapter Seven explores the forces that facilitate or hinder the implementation of the MPRDA and the Mining Charter (objective four) and establishes the role of the government in the implementation of the MPRDA and the Mining Charter (objective five). Both objectives are met by drawing empirical evidence through interviews with policy makers (the DMR and DTI), the executives and managers of white, foreign and black-owned companies. It has emerged from the interviews that the major stumbling blocks to the implementation of the MPRDA and the Mining Charter has mainly been the lack of finance, difficulties in accessing land in mineral areas, lack of relevant information about mining assets blacks buy and limited government support. At the positive level, there has been the willingness of white and foreign-owned companies to create mechanisms to accommodate blacks and help them. It has come to light that some of the emerging black-owned companies have experienced growth.

Chapter Eight summarises the general findings of the study and makes recommendations on how to improve the B-BBEE implementation process. The basic findings are that in terms of market capitalisation, the level of equity ownership is low and has not met the 15 per cent envisaged by 2009 and not even the 26 per cent for 2014. However the mining assets have also grown from R720 million in 2002 to R 1.8 trillion in 2011. If we take the fact that blacks never existed in the industry, it can be said from the findings that the Mining Charter has made their entry into the industry possible. White and foreign-owned companies have a wide range of black partners. However, what has emerged from this study is that white and foreign-owned companies have controlled the entire BEE implementation process by

determining where, how and who should benefit from BEE. They have also influenced the nature and type of BEE companies through their funding systems and strategies used. It is these that account for the prevalence of SPVs and consortiums and conditions. The government on its part has been contented with just putting in place regulations calling for the participation of blacks in mining and believing that the free market system will take care of the implementation of the regulations. The lack of direct support from the government has made BEE entrants in the mining sector totally dependent on white and foreign-owned companies.

2 The Evolution of the Broad Based Black Economic Empowerment Policy in South Africa

2.1 Introduction

Chapter One indicated that a changing political and economic landscape has influenced the structure of the mining industry. As it became clear that a black majority government would replace the apartheid regime and the economy would open to international competition, in the early 1990s, the white conglomerates started unbundling¹¹ their assets. In the process of unbundling the conglomerates brought in a few blacks into South Africa's corporate world. The ANC government also used State-owned Enterprises (SOEs) to advance a few blacks to top management, and also used procurement facilities to give preferential treatment to black businesses. All these happened before there was a formal BEE policy. The first section of this chapter examines the unbundling process.

Section 1.3 of this thesis discussed a series of apartheid laws that had limited black peoples' meaningful participation in the economy. From its 1955 Freedom Charter, the ANC's initial answer to apartheid was nationalisation. This route was abandoned as the party moved to take over political power. Instead, the ANC sought to intervene in its economy and put in policies that would empower blacks to participate in all sectors of the economy. Section two traces the changing nature of the ANC's economic policy. This helps to get a better understanding of how the BEE policy has evolved.

The B-BEEE policy was not an outcome of one grand policy that came with South Africa's first democratic election in 1994. It took almost ten years before there was a full elaboration of the policy. The elaboration resulted in the MPRDA, the Mining Charter and B-BBEE Act which emerged from negotiations between the government,

¹¹The word unbundling is commonly used in South Africa to indicate the dis-mantling of the old corporate structures that had elements of pyramid structures, cross shareholding and control blocs (see Chabane et al., 2006 and Kantor 1998).

white capital and other stake holders such as labour. For the government's perspective, the agenda in the negotiations was how the economy could adhere to market forces while dealing with economic imbalances between black and white races. By contrast, white capital was concerned about protecting its economic assets.

The policy was elaborated upon through two parallel processes, the first being under the mining industry. The Department of Minerals and Energy (DME) and now the Department of Minerals (DMR) promulgated the MPRDA and the Mining Charter in 2002. The second process was under the Department of Trade and Industry (DTI) which produced the B-BBEE Act in 2003 which covered the rest of the economy. Section three focuses on the MPRDA and the Mining Charter while section four covers the B-BBEE Act and the Generic Score Card and Codes of Good Practice that guide the implementation of the B-BBEE Act. Some problems were picked up during the implementation of B-BBEE policy. This then necessitated policy amendments. The last section looks at subsequent amendments.

2.2 Where are the Big Six? The Unbundling of the Conglomerates and the Incorporation of Blacks

Section 1.3 of this thesis submitted that by 1992, the top six South African conglomerates accounted for 85 per cent of the market capitalization of the Johannesburg Stock Exchange (JSE) (Halse 1982, Hirsh 2005). The conglomerates had various subsidiaries spread across many sectors of the economy. During the unbundling, conglomerates sold shares among themselves resulting in a pyramid structure and cross shareholding where one conglomerate owned a 'cascading' series of other subsidiary companies. For example, if company A owns 51 per cent of voting stock in company B, and B in turn owns 51 per cent of company C, then A will have acquired control over C through its commitment to B. This results in company A owning a contributing share of 25 per cent of C's equity capital, (IDRC 2004:2; Chabane et al., 2006). This implied that control could be attained through minority shareholding. A pyramid structure exists where a company has 50+1 share in another company or could derive 75 per cent or more of its attributable income before tax from a listed company. Cross shareholding refers to a situation where

companies own shares in each other's companies. Interlocking directorship was signified by a unique arrangement. According to this plan, one director sits on boards of at least six different companies spread across diverse sectors. Three per cent of the companies have almost half of their board of directors represented on the board of financial institutions.¹²

The same structure prevailed in the mining industry where the conglomerates (known as mine houses) developed over years. The mining houses were responsible for organising mining activities that could stand deep-level mining, attract large capital and be able to control world markets. This involved the amalgamation of small mines into large ones. The merger resulted in the pyramid structure and cross shareholding and control blocs (see and Kantor 1998). Names might have changed but, according to Feinstein (2005:104), by mid-1980, there were six giant mining houses which are also called conglomerates that controlled the JSE. These are the Rand Mines (34 per cent), Johannesburg Consolidated Investments Company (24 per cent), Anglo American (14 per cent), Gold Fields (11 per cent), Union Corporate (8 per cent) and General Mining Finance Corporations (5 per cent).

The mining houses were responsible for acquiring capital, organizing local and foreign labour, consolidating small mines into large scale mines and conducting mine functions in-house. In-house functions means that one mining company had various sections, each performing a particular function such as geological surveys, exploration, engineering services, transportation, procurement of mine equipment, marketing and a central office for administrative functions. It was the mine houses that controlled the development of the new mines by sponsoring new mine projects. The procedure is that, upon a mining company declaring that it had a potential mine project, it would approach a mine house which would organise funding (including providing operating finance), sponsor the floating of its shares on the JSE, source capital equipment, higher level-skilled and low-level skilled labour even if it meant importing mine engineers and migrant labourers. As the organisers and providers of

¹² In the context of South Africa board structure, roles and functions are guided by the King's Reports 1994, 2007 and 2009. See also Vaughan and Ryan 2006 and West 2006.

funding, conglomerates kept some shares in the mining companies that they sponsored resulting in the few large companies having shareholding of mine assets in other mining companies spreading in almost all mining categories of the industry (Innes 1983:2).

The strongest known conglomerate in South Africa was (and still is) Anglo American Plc. Its assets were spread in almost all economic sectors. In conjunction with the state at the time, Anglo American established the National Finance Corporation and had interest in other top banks in the country (Standard Bank and Nedbank) and had established Anglo American Life Insurance (1982) which increased its financial power (Innes 1983: 5-9). In the mining industry it had control of De Beers, JCI, Rustenburg Platinum, and Consolidated Gold Fields. The company's assets were diversified in all mining categories –diamonds, gold, coal, platinum and industrial metals. In other industries of the economy, the company had interest in top companies such as Barlows, South African Breweries, AECl, Tiger Oats (agricultural processing), Tongaat and Hulelts (sugar). Alone, Anglo American held 52.5 per cent of the market capitalisation of the JSE by 1982.

For many years, white conglomerates had close links with the apartheid regime, cemented by various incentives that they obtained. The incentives came in a form of the regime intervening directly by passing legislations that denied entry of blacks in the industry as owners, subjected blacks to low wage jobs, low skilled employment and even being replaced with migrant labour as indicated earlier. The government used immigration policy to import skilled labour. Most of the migrant labour came from neighbouring countries of Botswana, Lesotho, Malawi, Mozambique and Swaziland. The migrant labour system is still the major feature of the industry. Discrimination laws had negatively affected the economy. The negative consequences came in terms of higher wage costs because of higher wages paid to white labour, locking blacks' potential and limiting supply of skilled labour. Continued discrimination resulted in internal political resistance, capital flight and world-wide economic sanctions. Over the years all these acted against the conglomerates' profits. It forced the conglomerates to start engaging with the ANC in exile in a bid to safeguard their investments (Taylor 2007: 162).

The conglomerates also started unbundling their ownership structures in order to prepare themselves to enter into the global economic playground and accommodate themselves in the new political dispensation. However, the unbundling was much on the way they performed their business functions and not much on how they controlled the mineral wealth world-wide and did not address racial economical inequities (Chabane et. al. 2006; Malherbe and Segal 2001; Kantor 1998). The unbundling process involved a number of measures:

- (a) Separating mining assets from non-mining assets and the creation of sector specific mining companies.
- (b) Contracting out specific functions that were once done in-house and creating separate companies.
- (c) Changing of the financing mechanism of mining companies and moving assets outside the country. Instead of mining houses directly organising funding or sponsoring companies to float shares on the JSE, they had to raise capital through international listing and the use of internal funds. For example in 1994, 23 per cent of mining capital came from retained earnings, which increased to 40 per cent by 1999.
- (d) Moving assets offshore (Malherbe and Segal 2001: 15, 30-43).

Unbundling was necessary as the conglomerates had to ensure that their companies could stand the international competition after years of isolation and attract foreign capital. In the process of unbundling, conglomerates accommodated few blacks in their companies as a gesture to the coming democratic government that they are ready to share their wealth with blacks and that this can happen under capitalism.

The unbundling of mining houses has implications for black-owned companies entering the mining industry, thus, the black companies cannot rely on the mining houses to grant them sponsorship to list on the JSE or get services once offered or benefit from functions once performed. They are left to fend for themselves under the free market forces which are more competitive now than when mining first began in the country. On the part of the conglomerates, the unbundling process was

followed by shifting their primary listing and their headquarters abroad which helped them to access cheaper capital (Carmody 2000:263).

It is important at this point to give a detailed account of the unbundling process. This is necessary, as unbundling traces the traditional big six mining companies, identifies those which fell off completely from the picture of the mining industry, those that changed their names, the subsidiaries they created, the assets they kept for themselves or sold to others and those disposed to blacks and to new foreign-owned companies. It is from the unbundling process that one can understand the strategies that the conglomerates used to accommodate blacks under the B-BBEE policy and follow the analysis in Chapters Five and Six.

The unbundling process was kick-started by Barlow Rand. In 1993, the company unbundled its assets by splitting into three companies: Rand Gold Mines, Rand Coal and C G Smith (Industrial Holding) Company. The shares in each company were passed back to the original shareholders. In 1994, Rand Coal merged with Gencor's subsidiary Trans Natal Coal after buying out other shareholders and created a new company called Ingwe Limited. Ingwe was acquired by Billiton Plc in 1998 which later changed its structure and merged with BHP Billiton Australia and consolidated their coal assets and sold their less profitable and unsustainable mines to black-owned companies. Among those that were sold include Malta Joint Venture and Malta Colliery, New Clydesdale and Arno Colliery that in 2001 were sold to Eyesizwe, which is a black-owned company. In 1997, Rand Gold was split into four: Harmony Gold Mining; Durban Roodepoort Deep Gold (DRDGold); Crown Consolidated Recoveries and Rand Gold Resources. Rand Gold Resources became an off-shore company (ANC 2012:78,123). Harmony Gold Mining and DRDGold later took on black investors as detailed in chapter five.

The second company to be unbundled was Anglo American Corporation (AAC) which also owned De Beers Corporation Company. First in 1990, it split De Beers Corporation Company into two: De Beers AG (Centenary) and De Beers Consolidated Mines Ltd (DBCM Ltd). De Beers AG was used to house all its non-

South African assets and registered in Switzerland. This was its strategy of moving some of its assets outside South Africa. DBCM Ltd was used to house all its South African assets. In 1993, Anglo American sold its South American, European and Australian operations including De Beers's operations to Minorco but remained a main shareholder. It should be noted here that Minorco was created by Anglo American in the 1980s at the height of sanctions (ANC 2012:75). Second, in 1995 Anglo American Corporation split its assets into three: Amplats (to deal with platinum); Johnnies Industrial Corporation-JIC¹³ (to handle the non-mining assets) and Johannesburg Consolidated Investments-JCI.¹⁴ JIC was sold to a black-owned company – New Africa Investments Limited (NAIL) which collapsed during the Asian financial crisis in 1998 and its shares were sold back to Anglo. All the gold assets were placed under AngloGold Limited in 1998.¹⁵ Other assets were sold to Africa Mining Group, a consortium of black companies.¹⁶ Like NAIL, the African Mining Group accumulated heavy debts and was compelled to re-sell its assets back to Anglo American.

The third company to be unbundled was General Mining and Finance Corporation (Gencor). In 1986, Gencor acquired Union Corporation which was controlled by

¹³ Included in the JIC were South African Breweries shares (13.7 per cent), Premier shares (27.8 per cent), Toyota South Africa Marketing shares (26.4 per cent) and 43.2 per cent of Owni Media (ANC 2012:91).

¹⁴ These included: in gold – H.J. Joel (51 per cent shares), Randfontein Estates (31 per cent shares), Western Areas (35 per cent shares) and Lindum Reefs (84 per cent shares); in coal – Tavistock (100 per cent shares), United Carbon Products (58 per cent shares); in base metals – Consolidated Murchison (33 per cent shares); in chrome – Consolidated Metallurgical Industries; in mineral rights – 41 per cent of Freddev, and 45 per cent of Barnex and; in platinum – Amplats (7 per cent) and Johnson Matthey (9 per cent) and Anglo Platinum (ANC 2012:91)

¹⁵ AngloGold again was involved in share exchanges with 7 other participating companies. These include: East Rand Gold and Uranium Company Limited (ERGO); Eastvaal Gold Holdings Limited (Eastvaal); Southvaal Holdings Limited (Southvaal); Free State Consolidated Gold Mines Limited (Freegold); Elandrand Gold Mining Company Limited (Elandsrand); H.J. Joel Gold Mining Company Limited (HJ Joel) and Western Deep-levels). AngloGold and AAC acquired in private transactions (a 17 per cent shareholding in Driefontein Consolidated Limited –Driefontein and a 52 per cent of Eastern Gold Holdings Limited (Eastern Gold) (ANC 2012:92).

¹⁶ The members of the consortium included: Capital Alliance Holdings (CAH) led by Mzi Khumalo and controlled by the National Union of Mine workers, Mineworkers Social Investment Holdings and SACTWU Investments who together owned 63 per cent shares of AMG; Thebe Investments, Women Development Bank Investment Holdings and Consolidated Investment Holdings. The intrigues and scheming behind the AMG BEE deals is told by Barry Segeant, *Brett Kebble: The Inside Story*. Zebra Press, 2006. Of particular interest is chapter 18 of the book titled *The Laughing Zulu* that describe relationships between Kebble- the BEE deal maker and Mzi Kumalo, who had organized the African Mining Group.

Rambradt and Sanlam (an insurance company) and which had mineral and other non-mineral assets. In 1989 Gencor's mining assets were organised under General Mining Metals and Minerals (Genmin). Genmin had five divisions: Gold and Base Metals which were housed under Samancor; Platinum under Impala; Coal under Trans Natal and Minerals division. Gencor started preparing for its exit from the South Africa scene by disinvesting its non-mineral assets that included Engen (for oil), Genbel, Malbak and Sappi (timber). In 1994, Gencor bought the Royal Dutch Shell Mining and commodity trading assets and housed them under Billiton International. In 1997, it sold its base metals and non-gold interests including Alusaf (aluminium) and Richards Bay Minerals to Billiton International which then listed on the London Stock Exchange (LSE) as Billiton Plc. In the same year (1997), Gencor merged its gold assets into Gold Fields in which the Rambradt Company was a major shareholder and Anglo American owned 25 per cent shares. This resulted in the formation of Gold Fields South Africa (GFSA), a company that also listed on the London Stock Exchange (Virtual Metals Research and Consulting 2006:7). Further details on GFSA are provided in Chapter Five.

The fourth group to unbundle, Anglovaal had diverse mineral and non-mineral assets and was controlled by the Menell and Hersov families. In 1999, Anglovaal separated its assets into two. Mining assets were placed under a new company-Avmin and its industrial assets remained under Anglovaal. The Avmin assets included: AvminCoal which had 100 per cent stake in Forzado and Dorsfontein mining and 30 per cent in Eloff Mining and Satum which controlled 50 per cent stake in Venetia diamond and Finch Diamond Mines. In the year 2000, Avmin sold its stake in the two diamond mines to De Beers. Anglo American Corporation bought Avmin's 50 per cent stake in Associated Manganese; 75 per cent stake in Nkomati Nickel; 13 per cent in Assmang Limited and 18 per cent of Assore. Avmin's gold assets under Avgold were incorporated into Target and ETC gold mines and platinum assets into the Two Rivers Platinum Project. In 2004, Avmin gold assets were merged into African Rainbow Minerals (ARM) gold assets. ARM, which is a black owned company, used its assets that it obtained in its merger with Avgold to acquire a 14 per cent shareholding in Harmony (ANC 2012:137-8). This early BEE transactions built a

strong foundation for ARM to become one of the diversified and successful black-owned companies with Patrice Motsepe family trust as the main shareholder.

The fifth and last group to be unbundled was Iskor, the state-owned mining company. The IDC which is a state financial institution had 16 per cent shares at the time, but together with other private financial institutions (Standard Bank, SA Mutual, Southern Life, and Sanlam) controlled 50 per cent of Iskor. In 1989, Iskor was broken into two companies; Iskor that retained the name and Kumba. Iskor concentrated on steel making while Kumba became a mining company. Iskor was later taken over by Arcelor Mittal while Kumba was acquired by Anglo American (a major shareholder with 66 per cent). In 2005, Kumba was broken into two; Kumba Iron Ore that remained with iron production and Exxaro Resources Ltd that took over the non-iron ore assets. Anglo American helped to create Exxaro as a BEE company but retained 23.7 per cent shareholding. Other minority shareholders have a total of 20.2 per cent equity and 3 per cent was transferred to Exxaro EEPS (for its employees). Exxaro was listed on the JSE in 2006 and it has been used to bring in more black shareholders. Similar to ARM, Exxaro has grown to be a larger black-owned company and the most diversified (ANC 2012:137-8).

Outside the mining industry, the incorporation of blacks started with Sanlam, the second largest insurance company in South Africa. In 1993, Sanlam sold a 10 per cent stake in Metropolitan Life (MetLife) to Methold, a black consortium for R137 million. The transaction was funded by IDC which then warehoused the shares. Warehousing means that shares are kept by the funder until they are fully paid for. In February 1994, Southern Life sold a 51 per cent shareholding in Africa Life to Real Africa Investments (RAI) another black consortium (Mbeki 2007:3; Gqubule 2006:110-114; Southall 2006a:4).

Few points are made about the unbundling process explained above. First, it is with regard to empowerment deals that have emerged. There have emerged individual companies like ARM and consortiums that brought together various individuals and groups to buy equity from mining companies. Consortiums are sometimes part of the

larger black-owned companies and have remained the basic structure of black economic empowerment transactions to date. It is Anglo American Corporation that sold and bought many mining ventures during the unbundling. As we see in Chapter Five, it is the same company which has concluded many BEE deals. It can be safely said here that putting few blacks in the corporate world at this early stage was a way for the conglomerates to send a clear message to the ANC government that free market economy is a way forward for the economy and that blacks could be part of the free market economy. This, in return, was bound to thwart any attempt by the black elites at nationalisation.

The second is the financing of BEE deals. Since blacks had no own funds, shares in white-owned companies could only be acquired through loans. These were mostly organised by the sellers themselves who also acted as guarantors to the banks. This implies that, from the beginning, BEE deals in mining started with loans. The repayment of these loans depended on dividends paid. When these were not forthcoming, especially during an economic downturn the BEE companies accumulated debts. For example NAIL and AMG had to sell back their equity to the original owners during the Asian crisis in 1997/1998 because of escalating debts. This indicates the importance of finance in keeping mining assets in the hands of blacks. Those who drafted the BEE policy had some knowledge of these impediments, as some of them were among the beneficiaries of early BEE deals. ANC members like Cyril Ramaphosa were part of the negotiations with the business and members of the BEE Commission, a committee that was involved in the formulation of the BEE policy. These elites were supposed to argue strongly on the importance of government providing finance and other supports.

Third is the creation of special purpose vehicles (SPVs) which are separate companies used for BEE transactions. The SPVs also became a permanent feature of BEE deals. By creating SPVs, the conglomerates are buffered from their core mining investments.

At this juncture, it is important to look at the ANC's policy trajectory in order to understand the evolution of the BEE policy.

2.3 The Elaboration of BEE Policy

ANC's economic policy since the 1955 Freedom Charter had been nationalisation. It states that:

"--all peoples shall share in the country's wealth" -----; ---mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole; -----and all people shall have equal rights to trade where they choose, to manufacture, and to enter all crafts and profession." (ANC 1955: 82)

As a way of transferring ownership to the people, nationalisation was reiterated at all subsequent ANC National Conferences (Morogoro 1969, Kabwe 1985, and Durban 1991). Later, the ANC's stance on nationalisation appears to have been eroding. In 1992 at the ANC's 'Ready to Govern' conference in Kliptown, Johannesburg, Nelson Mandela produced an economic policy statement that was geared at the use of nationalisation and increase state ownership in some sectors of the economy, affirmative action at the work place and most importantly the use of equity ownership to empower the historically disadvantaged persons-blacks was used in the policy agenda. He stated that:

"----The democratic state will therefore consider increasing the public sector in strategic areas through for example, nationalisation, purchasing a shareholding in companies, establishing new public corporations or joint ventures with the public sector--. Reducing the public sector in certain areas in ways that will enhance efficiency, advance affirmative action and empower the historically disadvantaged--." (ANC 1992:16)

A further elaboration of the ANC's economic policy was presented in the Redistribution and Development Programme (RDP) document that was to act as ANC's election manifesto in 1994. The RDP represented an initial process of government intervention in the economy which was seen as crucial for the de-racialisation of the economy. This is clearly captured by Mr Saki Macozoma, a member of the ANC who participated in the writing of the RDP:

“It became clear that unless a decisive intervention that would de-racialize¹⁷ the South African economy was made there would develop a contradiction in society. Black people would continue to exercise political power. White people would keep their economic dominance. The greatest causality of such a standoff was going to be South Africa Incorporated. Such a standoff would create a paralysis that would mean that South Africa would not move forward.” (Maxozoma¹⁸ 2004: 61)

The RDP policy focus was broad. These include to de-racialize the economy, restructure the economy and reduce conglomerates’ control in the economy; reduce poverty and inequality; to improve social services (housing, clean water, electricity, telecommunication and health) to those previously disadvantaged (blacks); to allocate land to blacks for residential and other productive purposes and to incorporate blacks in all major sectors of the economy (trade, finance, agriculture, mining, and manufacturing) (see sections 4.4.2.7 and 4.4.6.3).

The implementation of the RDP did not achieve much on reduction of conglomerate control in the economy and incorporating blacks in the economy *per se*, but mainly on providing social services to the poor. Thus, between 1994 and 2001, it was recorded that 1.1 million affordable houses for the poor were constructed; about 1.3 million people had water within 200 meters; 1.75 million homes were electrified, 500 new clinics were built, a community based public works provided 240,000 people with jobs and 3, 500 square kilometres of land were allocated to blacks (Tshitereke 2012:167). Thus, the RDP’s focus was much on redistribution and not economic growth. It was economic growth which was considered important to generate enough income to redistribute and to generate the much needed employment.

In 1996, the RDP was replaced by the Growth, Employment and Reconstruction (GEAR) programme which focused on the reduction of fiscal deficit, inflation; the containment of wage demands; the maintenance of a stable exchange rate, the restructuring of state assets, the expansion of infrastructure programmes and

¹⁷ It should be noted that the word “racialisation” is a typical UK English spelling but in most government policy documents, it is spelled “racialization” with a “z”, like in de-rationalize” as it appears here. Throughout the thesis I use the word with a “z” and not “s” unless in a quotation.

¹⁸ This name appears as Macozoma in other literature. Here I used Maxozoma as it was used in the article.

attraction of investments (Department of Finance 1996:1-2).¹⁹ De-racialization and restructuring of the economy and the incorporation of blacks in the rest of the economy was not abandoned, and were to be pursued through line ministries, in particular, the DME and the DTI.

It took some time for these ministries to develop concrete economic empowerment policies. However, the term 'black economic empowerment' had already become a buzzword in the townships. According to Gqubule (2006:2), the term can be traced back to 1988 and was used by Mr Mogale, the then chairman of the Foundation for African Businesses and Consumer Services (FABCOS). It implied the use of the large black populations to exploit the economies of scale in purchasing inputs and other merchandise in order to fight economic marginalisation by apartheid laws. The term resurfaced in 1990 at the national conference of the National African Federated Chamber of Commerce and Industry (NAFCOC). It implied the call made NAFCOC for the JSE listed companies to include blacks as equity owners (shareholders), as part of the companies' board members, as beneficiaries of preferential procurement facilities and of senior management positions. NAFCOC proposed a 3-4-5-6 quota system to be used in order for blacks to benefit. A time frame was set to within ten years where all listed South African companies would have 30 per cent black members of boards, attain 40 per cent black equity ownership, where black suppliers would benefit from 50 per cent of all government procurement facility and constitute 60 per cent of senior management (Gevisser 2007:584).

The term was again used in 1993 at the Black Business Summit where a memorandum of understanding on black economic empowerment was signed by Tito Mboweni on behalf of the ANC (Gevisser 2007:586-587). At this point, the term came to mean the promotion of black participation in the formal economy although how this was to be done was not detailed. In the early 1990s when the South African

¹⁹ For a detailed treatment of a transition from RDP to GEAR see Tshitereke (2012 96-134). As for a more radical analysis of GEAR see Adelzadeh 1996. *From RDP to GEAR: The Gradual Embracing of Neo-liberalism in South Africa*, NIEP Occasional Paper Series, No. 3, August; Padayachee V and Michie J. 1998. *Three Years after Apartheid: Growth, Employment and Redistribution*, Cambridge Journal of Economics, Vol.22 and; Williams P and Taylor T. 2000. *Neo-liberalism and the Political Economy of the "new" South Africa*, New Political Economy, Vol.5.1

conglomerates were involved in unbundling, the term economic empowerment was widely used to mean the incorporation of blacks in the corporate world. “Black empowerment deals” meant business deals concluded between conglomerates and their black counterparts.

At the same time, the government also participated in empowerment activities in its effort to incorporate blacks in the main stream of the economy. Three measures were used by the government, first was using its procurement facilities to grant tenders to companies owned by blacks. In 2002, for example, Eskom, Denel and Transnet offered procurement contracts worth R9 billion to black-owned companies. Second the government used the four big SOEs namely Transnet, Denel, Telekom and Eskom and other important corporations to place blacks mostly connected to the ANC in top management positions. For example, Mafika Mkwanazi and Sizwe Nxasana were appointed to head Telkom, Saki Macozoma to head Transnet, Mvuleni Qhena the IDC, Mandla Gantshe DBSA and Khaya Ngqula SAA (Southall 2006a: 6). The third measure was the ANC itself having its own investment companies; some of these include Thebe Investment which had other subsidiaries like KKS Food Service, Maribo and Ucindo (ibid). These ANC investments as indicated earlier by Beresford (2015) and Cargill (2010), are used by the party to siphon from state business opportunities (see section 1,4 of this thesis). Thus, by the time of the first democratic elections in 1994, the term black economic empowerment had come to be associated with incorporation of blacks in the economy. It is this phase that was referred to as the first phase of BEE (see section 1.4 of the thesis).

However, from the 1994 first democratic elections, it took quite some time before the government came up with a formal BEE policy. The delays in part have been attributed to government’s initial focus on the elimination of apartheid laws and on reconciliation. President Mandela paid special attention to reconciliation which was seen as a vehicle for bringing peace and harmony between the people (Taylor 2007:151-153). Thus, the policy process was not part of government’s grand long-term plan but arose from different processes; one under the DTI and another under the DME. The DME process covered economic empowerment for the mining

industry and resulted in the MPRDA and Mining Charter in 2002. The DTI policy process resulted in the B-BBEE Act which came one year later, in 2003 covering economic empowerment for the whole economy. The following section details the policy process in the mining industry.

2.4 The DME and the Elaboration of the BEE Policy for the Mining Industry

The process of working out the new mining policy that would de-racialize the industry started in early 1995 following the publication of the ANC's *Draft Minerals and Energy Policy Discussion Document* in November 1994. The Department of Minerals and Energy (DME)²⁰ appointed a working group on mining policy that comprised representatives from the department itself, the Parliamentary Portfolio Committee on Minerals and Energy Affairs and other experts. The working group received submissions from both the National Union of Mineworkers (NUM) and the Chamber of Mines in August 1995²¹ before producing a document titled *Draft Principles on which a Mining Policy for South Africa should be based* in November 1995. In their submissions, NUM called for the improvement of the living and working conditions of black workers in the mining industry, the improvement of safety conditions and an end to discriminations of any kind against black workers. The Chamber of Mines on its part insisted that the government should restrict its role to the provision of an enabling environment for the industry to prosper and leave the market mechanism to drive the economic empowerment in the mining industry.

To carry forward the discussions on suggestions from the working group, a steering committee was formed by the DME. It included representatives from the old 'big six' mining conglomerates under the umbrella of the Chamber of Mines,²² organized

²⁰ In 2009 the DME was separated into two departments: The Department of Energy (DE) and The Department of Mineral Resources (DMR).

²¹ See NUM. *The Mining and Minerals Policy for a Non-discriminatory, Efficient and Prosperous Mining Industry in South Africa*, (August 1995) and the Chamber of Mines, *Mineral Policy in the New South Africa*, (August 1995).

²² The Chamber of Mines is the most powerful mining industry lobby group to which 90 per cent of the country's big mining companies belong.

labour represented by the National Union of Mineworkers (NUM); the Parliamentary Portfolio Committee on Minerals and Energy; the Mineral and Energy Policy Centre (MEPC) and other experts. After two years of discussions and public consultations, the committee produced *A Green Paper on South Africa's Minerals Policy* in February 1998. This then served as a basis for more public comments on the future of the new mining policy. The outcome was the white paper titled *White Paper: A Minerals and Mining Policy for South Africa* published by the DME in October 1998.

While government's intentions and what was needed to be done were clearly spelt out in the White Paper, there were still wide divergences of opinions, in particular, between the government and the mining conglomerates. The White Paper, as much as possible, presented the views for and against various proposals including its views with respect of state ownership of mineral rights (section 1.3.3) and black participation in equity ownership, control and management (section 2.3.2). It is important to go into some details about the White Paper, in order to understand the thinking behind the MPRDA that followed. The main issues raised in the White Paper were:

(1) The state's lack of exclusive mining rights.

Under the 1991 Mining Law, there was a dual-system where mineral rights were owned by the state and private holders. The state owned minerals rights in various surveyed and un-surveyed state land including rural areas such as Namaqualand and Northern Cape. These rights were governed by the Rural Areas Act (1974). It also held mining rights in the trust areas on behalf of the communities. The trust areas include the Lebowa Minerals Trust which was established under the Lebowa Minerals Trust Act (1987) and the Ngonyama Trust under Kwa-Zulu Natal Trust Act (1994). Other mineral rights were held by the then self-governing states which were established by apartheid government under separate development rule. These include Transkei, Bophutatswana, Venda and Ciskei (or known as TBVCs). It was estimated that mineral rights of the former TBVCs and trust areas represented 19 million hectares (15 per cent of land of the whole republic).

Mineral rights in the rest of the country were privately owned and it was the white conglomerates that controlled most of the mining activities in the TBVCs and the rest of the economy (DME: 1998: White Paper on Mining section 1.3; Cawood and Minnitt 1998). The ANC government wanted to have ‘full and permanent sovereignty of mining right, emulating the system that existed in Australia and Chile where the state is the *de facto* owner of all mineral rights and uses licensing to prospective mining investors and obtain fees and royalties in return.²³ To avoid the hoarding of mineral licenses, the state proposed the application of the “use-it or lose-it” or in other words “use-it and keep-it” principle (DME: 1998: White Paper on Mining section 1.3.6.1).

(2) The land and mineral rights ownership structure.

Under the common law, ownership of land means the rights to the minerals in it. The owner of the land had the power to separate the two rights and was allowed to cede to another person or reserve them. The mineral and prospecting rights were tradable (sold or leased) and allowed the owner to collect royalties. The system resulted in the acquisition and registration of rights by prospectors in expectation of selling. This allowed the hoarding of mineral rights which blocked entry of newcomers and especially small-scale miners and prevented mineral development in general.

(3) The control of geological, geochemical and geophysical data by existing mining companies.

Mining companies were protected by the Restrictions on Disclosure under Section 19 of the Mineral Act (1991) which forced the state to keep the geological, geochemical and geophysical data provided by prospecting permit holders confidential for 15 years. Governments in other countries, companies kept such information confidential for a shorter period in order to avoid duplication of exploration activities. The White Paper proposed that such data be kept for a shorter period in order to lower barriers to entry for prospective and especially aspiring black investors in the mining industry (DME: 1998: White Paper on Mining: section 1.1.4).

²³ The Royalty Act of 2008 that was signed by the President on 17 November 2008 gives the state the right to be paid royalties for prospecting and mining rights.

- (4) Dominance by white conglomerates of the mining sector and the rest of the economy.

The discussants of the White Paper recognised the economic imbalances that blacks faced. Disproportions included their having limited land ownership; not holding middle or senior management positions at the work places; having poor education, skills and entrepreneurial talents and having no capital (see the White Paper section 2.1). The White Paper proposed measures to deal with some of disproportions. For example, in order for blacks to afford to own and control mineral resources, it was proposed that the IDC and DBSA (which are state institutions) should finance new and existing mining ventures owned by blacks. Since the mineral wealth was still under the conglomerates, they were required to show their commitments and exhibit a “rapid, visible and significant” transformation (ibid: sections 2.2; 2.4 and 2.3.1). In short, the White Paper proposed the government to pass legislations with the power to:

- i) Ensure security of tenure in respect of prospecting and mining operations;
- ii) Prevent hoarding of mineral rights and sterilisation of mineral resources;
- iii) Address past racial inequalities by ensuring that those previously excluded from participation in the mining industry gained access to mineral resources or benefit from the exploitation thereof;
- iv) Grant the state custodianship of the nation’s mineral resources for the benefit of all;
- v) Bring about changes in the current system of mineral rights ownership with as little disruption to the mining industry as possible (White Paper 1.3.2) and;
- vi) Take reasonable legislative and other measures, to foster conditions conducive to mining which will enable entrepreneurs to access mineral resources on an equitable basis.

With regard to economic empowerment of blacks, this time there were much clearer views on what must be done. The government was called to intervene in the

economy in order to change equity ownership and management in the mining industry:

- i) The state to take a constructive interventionist role in altering the patterns of ownership in the industry and promoting black ownership at all levels.
- ii) White conglomerates to use Employee Share Ownership Participation Schemes (ESOPS) in order to promote ownership to broad participants.
- iii) Recognising that the mining industry had concentrated ownership and was heavily dominated by white capital and a small number of mining houses, the government was called upon to put policies in place that would de-racialized the mining industry and it was upon the conglomerates to demonstrate rapid, visible and significant transformation (White Paper 2.3.1).

However, the suggestions made in the White Paper did not go without opposition. The biggest came from the Chamber of Mines (at the time represented the white-owned major mining companies). The Chamber first argued that the state's demand of exclusive mineral rights was a form of "uncompensated expropriation," of the white companies' mining rights which tampered with private ownership and was against capitalism. The retaining of mineral rights in private hands and even hoarding of licences helped mining companies in terms of asset valuations. Mineral assets are valued based on current and on-going flow of new projects (known as blue sky projects). The more licences a company may acquire the better chance it may have to obtain finance. This was the same for the geological, geochemical and geophysical data on minerals. As such, data was a product of individual mining companies' effort and thus could be bought and sold.

Second, the Chamber saw no need to transfer equity to blacks because people of all races (including blacks) already had enough capital stakes in the mining sector through pension funds. Third, the Chamber said market forces were a better mechanism to guide equity ownership of blacks. The argument was that legislations

that sought to change ownership structure were likely to scare away foreign investors and lead to de-industrialisation (Chamber of Mines: 1998).

It fell upon the government to negotiate with the conglomerates before developing a new mining policy that would accommodate the white conglomerates' demands. The challenge for the government then was how to accommodate all the three concerns: to attract foreign investments, adhere to the market forces and to increase black participation in the economy and in the mining industry, in particular. The section below concentrates on the policy evolution that led to the MPRDA.

2.4.1 The Minerals and Petroleum Resources Development Act (MPRDA)

The MPRDA was finally passed by parliament in 2002. It replaced the 1991 Minerals

Act. Some of the objectives of the MPRDA are to:

- i) Recognise the internationally accepted right of the state to exercise sovereignty over all the mineral and petroleum resources within the republic;
- ii) Give effect to the principle of the state custodianship of all mineral resources within the Republic of South Africa;
- iii) Promote equitable access to the nation's mineral resources to all peoples of South Africa;
- iv) Substantially and meaningfully expand opportunities for the historically disadvantaged persons, including women to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;
- v) Promote employment and advance the social and economic welfare of all South Africans;
- vi) Provide for security of tenure in respect of existing prospecting and mining operations; and

- vii) Ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating (MPRDA 2002 Chapter 2.2).

The act states that mineral and petroleum resources are the common heritage of all the people of South Africa.

This study's interests pertain to the second, the third, fourth and the sixth objectives. On the second objective which is related to custodianship, Cawood (2005:2) says that custodianship regulates access to mineral properties. The state's exercising of this custodianship ensures these resources benefit all South Africans, regardless of race, and also discourages the hoarding of mineral rights (the practice of owning mineral rights without the intention to mine and process them). State custodianship is exercised through the Minister of Mineral Resources who is then given powers to grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting rights, permission to remove, mining right, mining permit, retention permit, technical cooperation permit, exploration right and production right (MPRDA 2002:2.3(a)).

In objectives three and four, the Act first calls upon the minister to “facilitate assistance to any historically disadvantaged persons (HIDSAs)²⁴ to conduct prospecting and mining operations.” It is stated further that the minister may request any relevant state organ to assist the applicant concerned in the development of his or her prospecting or mining project (MPRDA 2002:2.12). In addition, the Act specifically calls for the transformation of the minerals industry. Section 100 of the Act calls upon the minister to ensure the attainment of government objectives concerned with redressing historical, social and economic inequalities, as stated in the constitution. The minister was required within six months from the date on which

²⁴ For the MPRDA “historically disadvantaged person means (a) any person, category of persons or community disadvantaged by unfair discrimination before the constitution took effect; (b) any association, a majority of whose members are persons contemplated in paragraph (a); (c) any juristic person other than an association, in which persons contemplated in paragraph (a) own and control a majority of the issued capital or members interest and are able to control a majority of the members vote.

the act took effect develop a broad based socio-economic empowerment charter. The charter was to set the framework, targets and timetable for effecting the entry of historically disadvantaged South Africans into the mining industry and allow them to benefit from the exploitations of mining and mineral resources (MPRDA 2002:100).

On objective six, in particular schedule II of the act, the aims are to:

- i) Ensure that the security of tenure is protected in respect of prospecting, exploration, mining and production operations;
- ii) Give the holder of an old order right an opportunity to comply with the act;
- iii) Promote equitable access to the nations' mineral resources (Schedule II.2).

The holders of the old-order rights were given time (up to 2009) to apply for new-order rights.²⁵ However, one of the conditions in the conversion process was that the holders of rights had to accommodate HDSAs by expanding employment and other economic opportunities including offering a percentage of equity. The undertakings to effect such requirements were explained in section 2(d) and 2(f) and Schedule II.4g; 5f and 7k) of the act. In short white or foreign-owned companies' inclusion of blacks in their company structures as equity shareholder or business partners became one of the major considerations in the conversion of old-order rights to new-order rights. The licensing process became the major instrument to enforce the entry of blacks in the industry.

The government needed an assurance that the conglomerates would commit themselves to the objectives of the MPRDA. The government demanded that the mining industry develop a charter within six months. The Broad-Based Social-

²⁵ Old-order rights are those licenses that existed before the act and new order rights are those granted after the act. Mining rights are applicable where mining is taking place while prospecting rights are offered where an investor believes a specific area has mineral deposits (MPRDA schedule II.2). Prospecting rights are given for 5 years and renewed once for a period not exceeding 3 years. The mining rights are granted for a period of 30 years. To convert old order mining rights to new order mining rights, prospecting rights were given a transitional period of two years and mining rights five years starting from 1 May 2004.

Economic Empowerment Charter for the South African Mining Industry (or referred to simply as the Mining Charter in the thesis) was indeed published within six months (gazetted on 11 October 2002) after the passing of MPRDA. The main aspects of the Mining Charter are briefly explained below.

2.4.2 The Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry

As with the MPRDA, the Mining Charter was an outcome of extensive consultations and negotiations between the government, the mining companies represented by both the Chamber of Mines and the South Africa Mining Development Association-SAMDA²⁶ and labour. The Charter was considered under the requirements of section 9 of the Constitution of South Africa on equality and unfair discrimination.²⁷ In the preamble, the Charter refers to the history of South Africa which resulted in blacks, mining communities and women being excluded from participating in the main stream of the economy. The Charter goes on to repeat objective 2c and 2d of the MPRDA namely to: Promote equitable access to the nations mineral resources to all people of South Africa and substantially and meaningfully expand opportunities for HDSAs, including women, to enter into the mining and minerals industry and to benefit from the exploitation of the nations' mineral resources. To these two were added four other objectives. These are:

- i) Utilize the existing skills base for the empowerment of HDSAs
- ii) Expand the skills base of HDSAs in order to serve the community;
- iii) Promote employment and advance the social and economic welfare of mining communities and the major sending areas: and
- iv) Promote beneficiation of mineral commodities (Mining Charter Section 3).

²⁶ SAMDA represents mostly junior mining companies and most black-owned mining companies.

²⁷ Section 9 of the South Africa constitution focuses on equality (9:1 and 2) and non-discrimination (9:3, 4, 5).

These objectives are to be understood within the context of transformation of the mining industry which is explained in section two of the Charter. Transformation involves assisting, providing, initiating and facilitating:

- i) HDSAs' ownership participation in existing or future mining, prospecting and beneficiation operations;
- ii) HDSAs' participation in or control of management of such operations;
- iii) Development of management, scientific, engineering or other skills for HDSA;
- iv) HDSAs' involvement of or participation in the procurement chains of operations;
- v) Having integrated socio-economic development for host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilizing all stakeholder resources.

As indicated earlier, this thesis is limited to investigating equity ownership and participation in control and management. In section 4.7 of the Mining Charter, participation of HDSAs on equity ownership and has to take the two forms: active or passive involvement. Active involvement includes situations in which HDSA-controlled companies have 50 per cent plus 1 vote, which includes having management and control; strategic joint ventures or partnership in which HDSA owns 25 per cent plus 1 vote and which will have joint management and control agreement; collective investments through Employee Share Option Programmes (ESOPs) and mining dedicated unit trusts which would allow HDSA participants to vote collectively. Passive involvement refers to share ownership of up to 100 per cent shares without any involvement in management.

The Mining Charter set the target for HDSA equity ownership at 26 per cent in ten years (coincided with 2004). The Mining Score Card (discussed below) gives a 15 per cent target for the first five years (coincided with 2009). As for HDSA participation in management and control, the Mining Charter calls upon mining companies to establish targets for employment equity participation, particularly in

the junior and senior management categories. The base line was set at 40 per cent HDSA participation in management within five years (section 4.2).

As noted in section 2.2 above, the conglomerates had sold assets to blacks in the unbundling process. More assets continued to be sold to blacks at the time when the MPRDA and Mining Charter were being put in place. It was therefore in the interest of the conglomerates to ensure that their prior sales to blacks were recognised and hence the inclusion of the “continuous consequences principle” (Mining Charter section 4.7). This principle allows all previous deals that a white or foreign-owned company had concluded with a black company to be included in calculating credits/off sets in terms of market shares. This implies the value of deals that were concluded before the 2004 would be used in calculating the 15 and 26 per cent equity ownership targets. The market shares are as measured by ‘attributable units of production.’ The term ‘attributable units’ means that only the values of units of minerals that are related to white and foreign-owned companies’ production in South African soil are considered in the calculations when determining black shareholding. The values of such companies’ production elsewhere are excluded.

The mining companies then agreed to transfer up to R100 billion value of mine assets, which was equivalent to 15 per cent of the JSE listed value of mining assets, within the first five years (by 2009) to HDSA. The transfer was to be done on a willing- seller-willing buyer basis, in a transparent manner and at a fair market value and provided the mining companies were not at risk (section 4.12). From Chapter One (see section 1.4 of this thesis) it was indicated that the national financial capacity was limited to meet R100 billion required for the BEE transactions. It was expected that the government would have sourced alternative funding.

At first, the government did not establish any institution to monitor and evaluate progress. The government made an agreement with the mining companies for them to report on an annual basis on their progress towards achieving their commitments to BEE policy, as opposed to being evaluated by external auditors. Voluntary reporting has become common practice in the mining industry. Except in the Generic

Score Card (explained later in the discussion), the policy documents did not say anything about offering certificates that show compliance with BEE policy. As indicated in chapter one (see section 1.4), critics have indicated the dangers of using private assessors that limit the government's ability to gauge the implementation process and get genuine feedback.

The mining companies also agreed to voluntarily publish in their annual reports the BEE programs conducted at their companies and reveal how much progress they had achieved. To this effect, most of the mining companies publish annual reports and have a section on BEE where showcasing their BEE compliance status, blacks who have joined the management of these companies and other issues. According to Ntim and Soobaroyen (2012:124), it is the voluntary disclosures that provide the JSE listed companies' legitimacy on their operations and wins them government support. The mining companies and the government also agreed to participate in annual forums in order to share their experiences, identify problems, find solutions, arrive at joint decisions and plan further strategies for intervention (see section 4.14). The mining companies and the government agreed to review progress after five years (which coincided with 2009) to determine whether they have reached the 15 per cent or the 26 per cent target equity transfer to blacks. The review was done not in 2009 but 2010. The Charter was accompanied by the Mining Score Card which is discussed below.

2.4.3 The Mining Scorecard

The aim of the Score Card was to facilitate the application of the Mining Charter in terms of the MPRDA requirements for the conversion of all the old-order rights to new-order rights within five years conversion window which ended in 2009. The Score Card has ten categories:

- i) Human resources development under which the companies undertook to offer all employees to be functionally literate and numerate by 2005;
- ii) Career paths for HDSA and the development of systems for mentoring HDSA groups;

- iii) Employment equity that involved companies publishing their employment equity plans;
- iv) HDSA participation in management and women participation in mining and identifying talent for fast tracking transformation;
- v) Migrant labour which aimed at ensuring no discrimination against migrant labour;
- vi) Mining community and rural development which focused on engaging the local mining community;
- vii) Housing and living conditions that is aimed at improving the living conditions of mine workers;
- viii) Procurement which gives preferential treatment status to HDSA suppliers of capital goods, consumables and services;
- ix) Beneficiation which requires mining companies to establish their base line level of beneficiation in the county and;
- x) The transfer of equity ownership and establishment of joint ventures, (DME: 2002a categories (See Appendix 1)).

It is critical to note here the fact that it was only the category on ownership and joint ventures that the 15 and 26 per cent targets applied (Appendix 10.1). As for the rest of the categories, no targets were indicated. The Score Card required complying companies just to answer a set of questions in yes or no format. For example, the companies were asked whether they had set plans in motion to attain the targets and were expected to answer “yes” or “no”, as opposed to specifying the targets met. There are a number of criticisms from KIO (2010:22-23). The first is the lack of details on how the white and foreign-owned companies have to comply on the categories indicated and the absence of numerical targets for indicators except for equity ownership. The second is the lack of a rigorous measurement system with clear definitions to significantly reduce the possibility of different interpretations by companies. The third is the failure to develop a robust system to monitor implementation and the lack of mechanism to independently verify the mining companies’ contributions in communities.

The KIO report goes further to note that mining companies are confusing the mere signing of a BEE transaction with the achievement of the ownership target. In other words deals are signed but compliance targets are low. KIO criticises the Charter and Mining Score Card “as a hopeless and inadequate tool for transformation of the economy” that is divided in racial segregations in many aspects. KIO also regards the demands of the Charter as “the relics of the past era.” For KIO the mining companies are using the Mining Charter as a convenient shield to avoid fundamental transformation of the mining sector. KIO therefore calls for the application of the B-BBEE Score Card developed after the B-BBEE Act to apply to the mining sector as well (KIO 2010:22-23).

I will return to some of these points after the discussion of the B-BBEE Act, the Generic Score Card and Codes of Good Practice.

2.5 The DTI and the Elaboration of the BEE Policy for the Economy at Large

In 1998, the DTI started the policy process that was to guide black economic empowerment for the rest of the economy. The DTI started the process after the Black Management Forum at its national conference in November 1997 in Stellenbosch had asked the government to clarify its BEE policy. This call was endorsed by the ANC national conference in Mafeking in December 1997. In response, the government established the Black Economic Empowerment Commission in May 1998. The commission was chaired by Cyril Ramaphosa who was the former Secretary General of the ANC but had left the government for business and included other ANC members with business experience like advocate Dikagang Moseneke, Zwelakhe Sisulu, Saki Macozoma and the late Dr Nthato Motlana (Southall 2006a). The BEE Commission was given the mandate of formulating an economic empowerment strategy for the government.

The BEE Commission published its report in 2001 (henceforth referred to as BEE Com Report). The report called upon the government to pass legislations to guide black economic empowerment towards being broad based, so as to benefit more

people and reflect South Africa's populations. It also called for the creation of institutions, such as the National Empowerment Funding Agency (NEPFA), to drive the BEE strategy to finance black entrepreneurs. Other suggestions included the need to apply employment equity measures, provide training programmes, develop small businesses, establish business centres for blacks and increase access to financial services for blacks.

In addition, the report prescribed preferential quotas to be used. Blacks were to benefit from 30 per cent of government procurement, 40 per cent of government incentives offered to the private sector, 50 per cent equity of state-owned enterprises being privatized, 25 per cent ownership and 40 per cent of directorship of the companies listed on the JSE, 30 per cent of productive land and 50 per cent of borrowed fund of the National Development Corporation. The targets specified above were to be achieved within a period of ten years (coinciding with 2014). When this information was leaked to the media, the conglomerates strongly opposed the suggestions, resulting in a sharp fall in the value of shares on the JSE (BEE Com: 2001:8-9).

After the release of the BEE Com. Report, the government mandated the DTI to formulate and co-ordinate the establishment of a B-BBEE Act. The DTI was then involved in extensive consultations and negotiations with various stake holders such as the President's Black Business and Big Business Working Group, the Trade and Industry Chamber for National Economic Development and the Labour Council. In March 2003, the DTI published government's position under the title: *South Africa's Economic Transformation: A strategy for Broad-Based Black Economic Empowerment* (DTI B-BBEE Strategy-2003 document). As indicated in the strategic document, the government intended to use various policy instruments to achieve black economic empowerment. These instruments included: legislation which involved the passing of the Broad Based Black Economic Empowerment Act that would establish a general framework for black economic empowerment; regulations through a balanced Score Card to measure progress made in achieving BEE; the restructuring of state enterprises, the use of preferential procurement; the creation of

institutional support and a BEE Advisory Council and the establishment of partnerships and charters and; financial support (DTI B-BBEE Strategy-2003 document section 3.5).

In April 2003, the Minister of Trade and Industry appointed an advisory committee to finalise the Broad -Based Black Economic Empowerment Bill. The final outcome was the ‘Broad-Based Black Economic Empowerment (B-BBEE) Act (No. 53) passed by Parliament in September 2003 and signed by the President in January 2004. It is from this juncture that the term B-BBEE became official.

2.5.1 The Broad Based Black Economic Empowerment Act (2003)

The preamble to the B-BBEE Act states that the Act will be used to deal with the effect of the past racial policies that were used to prevent blacks to access production resources and skills and job opportunities in the economy as whole. The term “broad-based” in the title of the act refers to a wide category of beneficiaries that are covered by the Act. These include women, workers, youth, people with disabilities, and people living in rural areas. The objectives of the Act are to:

- (1) Promote economic transformation in order to enable meaningful participation of black people in the economy;
- (2) Achieve a substantial change in racial composition of ownership and management structures and skilled occupations of existing and new enterprises;
- (3) Increase the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises and increase their access to economic activities, infrastructure and skills;
- (4) Increase the extent by which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and training skills;
- (5) Promote investment programmes;
- (6) Empower rural and local communities by enabling them benefit from equity ownership, access economic resources such as land, develop their skills and provide them with important infrastructure, and

- (7) Ensure finance is available and accessed for black economic empowerment initiatives (The B-BBEE Act, 2003:1-2).

These are the same issues that were covered in the MPRDA and the Mining Charter, except that the two policy documents added those aspects that pertain to the mining industry. These include issues of housing for miners, safety of workers, and security of tenure as explained earlier. The Minister of Trade and Industry was instructed to publish A Generic Score Card and the Codes of Good Practice that would interpret and define broad based black economic empowerment, offer guidelines to companies which seek to do business with the government and specify measurable elements in order to gauge the success of the programme (B-BBEE Act section 9). These are detailed in the next section of this thesis. The Act also called for the establishment of Black Economic Empowerment Advisory Council. This institution (chaired by the President) was mandated to advise the government on B-BBEE policy issues and to review the implementation progress (Section 4). The advisory council was established in 2010 and is currently constituted by 20 people. These are: The President of the country as Chairman, the Minister of Trade and Industry (with the Director General as alternate member), the Minister of Labour, the Minister of Economic Development, the Minister of Women, Children and Disabled and 15 other members.

The Act further called for charters to be concluded between the government and stakeholders of each sector of the economy and Score Card to accompany the B-BBEE Act. It should be noted that the Mining Charter was signed in 2002. Since then, other charters have been published. These include the Maritime and Transport Sector (2004); the Tourism Sector (2004); the Financial Sector (2007); the Integrated Transport Sector (2008); the Construction Sector (2008); the Forest Sector (2008); the Agricultural Sector (2008) and the ICT Sector (2008).

2.5.2 The B-BBEE Generic Score Card and Generic Codes of Good Practice

The first draft of the Generic Score Card and Generic Codes of Good Practice was published in 2004. A revised version came out in 2005 and the final version was gazetted in 2007.²⁸ The stated purpose of the Codes of Good Practice is to provide the principles and guidelines that assist and advise both the public and the private sectors in their implementation of the objectives of broad based BEE (Balshaw and Goldberg 2008:74). Thus, every organ of state and public entities (listed in the Public Finance Management Act) must apply the Codes of Good Practice in determining qualification criteria for the issuing of licences, concessions or other authorisation in respect of economic activity; developing and implementing a preferential procurement policy; developing criteria for entering into partnerships with the private sector and; determining criteria for the award of incentives, grants and investment schemes in support of broad based black economic empowerment (B-BBEE Act 2003:Section 10).

The Generic Score Card is used to measure the BEE status of an enterprise. This is based on specific elements with clear-cut indicators. These are weighted to provide a specific score. The elements are grouped into two: direct and indirect empowerment. Direct empowerment is further subdivided into equity ownership measured by a percentage of shares under black ownership and accounts for 20 per cent of total weighting; management and control is indicated by the percentage of black persons in executive management and board and accounts for 10 per cent of total weighting; human resources which includes employment equity and skills development each having 15 per cent weighting. Indirect empowerment is divided into preferential affirmative procurement, that is, procurement from black owned and empowered enterprises which is weighted at 20 per cent and enterprise development standing for investments in black owned and empowered enterprises accounting for 15 per cent

²⁸ For a detailed treatment of generic scorecard and codes of good practice and how to calculate compliance points see Balshaw and Goldberg 2005. *Cracking Broad Based Black Economic Empowerment: Codes and Score Cards Unpacked*, Human and Reauseau and 2008. *Broad Based Economic Empowerment: Final Codes and Score Card*, Human and Reauseau. See also Peter Leon Partner, Webbel Wentel Bowans 2007. "Understanding the Key Elements of BEE: Charters, Score Cards and Codes of Good Practice". *Mine Africa BEE Seminar*. London.

weighting. This leaves a 5 per cent weighting known as residual. What is counted under the residual is determined by a sector or enterprise and is tied to social economic development initiatives. These elements are used to measure the BEE status of an enterprise (See Appendix 10.3).

In the 2004 and 2005 versions of the Generic Scorecard and Codes of Good Practice, all companies were required to comply with all the seven elements of the score card, but, in the final 2007 version companies are categorised according to their market capitalisation. The first category is micro enterprises (MEs), those with market capitalisation of less than R5million. The MEs are supposed to provide a certificate of proof of their market capitalisation from an auditor or accounting officer to be exempted from the Score Card. The second category is start-up enterprises (SUEs), those companies that have just been established. These are given one year grace period (of not complying with the Score Card), regardless of their market capitalisation. However, these companies must submit a qualifying small enterprises (QSE) proof when tendering for any government contract with the value of R5 million but less than R35 million. The third category is qualifying small enterprises (QSEs), that is, companies with a turn-over of between R5million and R35million. These are allowed to select any four of the seven elements of B-BBEE for evaluation. The fourth category is made up of companies with a turnover of R35million and above. These companies have to comply with all the seven elements of the Generic Score Card (Scorecard 2007: Articles 4.5 and 6). The fifth category is the multi-national companies (MNCs).

The MNCs that could not comply with the ownership component of the B-BBEE Act through the sale of shares to blacks were given the option to use what is referred to as “equity equivalents”. This was to be calculated against 2.5 per cent of the value of the multinationals’ South African operations or against 4 per cent of the total revenue from the South African operations annually (DTI 2007c:1). A list of recommended forms of equity equivalents included Enterprise creation programmes, social economic development, economic development programmes, technology transfer/diffusion within the small, medium and micro enterprises sector and,

promotion of economic growth and employment creation (DTI 2007c:3). Such detailed explanations are missing in the Score Card for the Mining Charter, as discussed earlier.

Balshaw and Goldberg (2008:107) have pointed out that the 2.5 per cent of the asset value of the multinationals business or the 4 per cent of total revenue from South African operations is rather too high when considering that these assets are substantial. Balshaw and Goldberg also argue that the multinationals may simply ignore this element of the Score Card or vote with their feet.

In terms of monitoring compliance, the DTI established the South African National Accreditation System (SANAS) in order to accredit BEE rating agencies which are private companies (Score Card 2007: Article 10). The rating agencies are required to evaluate the white and foreign-owned companies and determine their level of compliance and their BEE status and offer them compliance certificates. In doing this task, the rating agencies have to refer to the requirements of not only the Generic Score card, the Codes of Good Practice, the sector charters and other relevant BEE policies. These agencies are expected to use the weighting system in the Generic Score card explained above to count the accumulation of percentages that a company obtained and use such percentages to determine the level of compliance that a company had reached. The overall aim is for a company to gain 100 per cent points in ten years' time. Within the ten year period, a company, however, has to obtain an annual compliance certificate in order to continue doing business in South Africa and to transact with the government and other organs of state.

As noted in section 1.4 of this thesis, the use of rating agencies to check BEE compliance does not allow the government to have a proper and genuine feedback on what is taking place and thus identify problems and solutions in the implementation process (Ryan 2009/2010, Acemoglu et al., 2007 and Ponte, Roberts and van Sittert 2006). The need for a state mechanism to enforce compliance was to top the agenda of the BEE policy amendments that started in 2010. The following sections focus on these amendments.

2.6 The BEE Policy Amendments

The first BEE policy to be amended was the Mining Charter. The Charter had called for its own review after five years of its implementation (which fell in 2009) in order to find out problems and gaps and to suggest new strategies that will carry the economic empowerment forward. In preparation for the review, the DME (2009b) produced a *Mining Charter Impact Assessment* as the basis for review in early 2009. The South African Mineral Development Association also commissioned KIO Advisory Services for an independent study on the impact of the Mining Charter. The study was released in 2010 prior to the review of the Mining Charter under the title *Management Control and Employment Equity in the Mining Industry*. Details of these two reviews are provided in Chapter Five. They are mentioned here because of the impact these had on the Amended Mining Charter. The second policy amendment was for the B-BBEE Act starting in 2012 and the third amendment was for the MPRDA starting in 2013. Attention below is paid to the Amended Mining Charter and the Amended B-BBEE Act. The Amended MPRDA Act is not covered here, because it was passed by parliament after the completion of this study and had not yet been signed by the President.

2.6.1 The Amended Mining Charter

A Mining summit was convened in March 2010 to review progress on the implementation of the Mining Charter. The task to review the charter was given to the Mining Industries Development Growth and Employment Task Team (MIDGETT). It was to report to the mining summit scheduled for June 2010. The summit produced a Stakeholder Declaration on 30 June 2010 which was more of intent rather than a working document. The summit proposed amendments to the Mining Charter and these were incorporated in the Amended Mining Charter that was gazetted in September 2010.²⁹

The Amended Mining Charter kept the ownership targets the same, that is, 26 per cent, to be achieved by March 2015. This ownership target could be offset against

²⁹ A Comparative Analysis of the Revised Charter 2010; the Stakeholder Declaration 2010; the 2002 Charter and the Code of Good Practice is provided by Cliffe Dekker Hofmeyer, *Mining Matters*; Spring 2010

the value of beneficiation a mining company engages in but this should not exceed 11 per cent (section 2.3). The term beneficiation is defined as “the transformation of a mineral (or a combination of minerals) to a higher value product which can either be consumed locally or exported.” The importance of beneficiation to the South African economy was highlighted in the DMR document *The Beneficiation Strategy for the Minerals Industry of South Africa* produced in 2011. According to Mr Carel de Jager,³⁰ the most pressing issues to a typical mining company are to extract minerals from the ground and process them to a level that they can be stored and transported to the market. The issues of beneficiation are beyond the activities of miners and depend on other technologies, expertise and consumption attributes of an economy. In terms of management and control, the Amended Mining Charter called upon every mining company to achieve a minimum of 40 per cent HDSA demographic representation at Executive Management (Board) level, Senior Management (EXCO) level, core and critical skills, middle management and junior management by 2014.

The Amended Mining Charter provided clearer definitions of important terms. The two definitions that are of interest to this study are effective ownership and meaningful economic participation. Effective ownership is defined as the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities. Meaningful economic participation was to include the following attributes:

- (a) BEE transactions being concluded with clearly identifiable beneficiaries in the form of BEE entrepreneurs, workers (including ESOPs) and communities;
- (b) Having some cash flow to the BEE partners throughout the term of the investment;
- (c) BEE having full shareholder rights such as those of full participation at annual general meetings and voting rights, regardless of the legal form of the instruments used (Amended Mining Charter 2010:iv). These definitions are

³⁰ I had an informal interview with Mr Carel de Jager an engineer formally with Anglo American Plc that I met at the MRRI seminar series conducted by the University of Pretoria. I have been attending these seminars since 2014 and the seminars are attended mostly by mining engineers and other experts in mineral extraction activities.

important, as they bring more clarity on the white and foreign-owned companies' compliance with equity transfer to blacks.

Another change in the Amended Mining Charter was the requirement for every mining company to report annually its level of compliance with the Mining Charter to the DMR. The DMR has to monitor and evaluate such compliance (section 2.9). Non-compliance has to be penalized in line with section 98 and 99 of the MPRDA Act.

A revision of the Mining Charter was accompanied with the revision of the Mining Scorecard. The main difference between the old Mining Scorecard and the new one is that specific targets are now set and replace the yes and no questions for each element as indicated in appendix 10.1. These elements were more or less in line with the Generic Score Card of the B-BBEE Act.

The thesis has few concerns with the above amendments. The first relates to finance accruing to BEE partners regardless of the performance of the mining company. Paying BEE partners might be difficult in cases of new ventures where no financial returns are yet to be realised. A case in point is the Kgalagadi Manganese (though the company is not in my sample), a joint venture between Kalahari Resources and Arcelor Mittal. Its Chairwoman Daphne Mashile-Nkosi, started Kalahari Resources in 2001, got a licence to mine in 2005, and sank her first shaft in 2008. Until 2015, she says she has not seen a cent from manganese but still has to incur running costs and pay debts. She only expects cash flows in 2018 (See Sunday Times 4/10/2015: 9). The questions that arise then are how to ensure a return to BEE partners? Are partnerships between black-owned companies supposed to have the same treatments? In short, what is questioned is the practicability of funding BEE partners regardless of the performance of the company. These, however, are questions beyond the thesis.

The second concern about the Mining Charter is on the 40 per cent top management and senior management components aimed at ensuring that blacks have some control in the mining industry. In a situation of concentrated and cross shareholding seen in

the mining industry, board membership and senior management positions do not guarantee control because crucial decisions on investments could be made by the major shareholders. For example, Anglo American as the major shareholder of Anglo Platinum and Kumba still controls investment decisions; a number of blacks on the board of the two companies might have little influence. The same might be with the foreign-owned companies. This point is further discussed in Chapter Six that focuses on BEE policy and management and control in the mining industry.

2.6.2 The Amendment of the B-BBEE Act (2003)

The B-BBEE Amendment Bill was submitted to parliament in December 2012. It was approved by parliament as Act 46 of 2013, gazetted on 27 of January 2014 and became effective on 24 November 2014. The Act was amended to include a clear definition of fronting and the institution of penalties for the same. From BEE literature (see section 1.4 of this thesis), fronting, while not properly defined as a punishable offence, is identified as one of the major problems (Gothenburg University 2001; Randal 1996).

In the Amended B-BBEE Act, fronting is defined as a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the B-BBEE Act or the implementation of the provisions of the Act. This transgression involves, among other things: the conclusion of a legal relationship with a black person so the dominant order's enterprise achieves a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person (section 1e of Act 46 of 2013). 'When arrested and convicted for fronting, the culprit is suspended for 10 years from transacting with any organ of state or public entity' (section 8 of Act 46 Of 2013). The amendment also called for was the establishment of the Broad-Based Black Economic Empowerment Commission.³¹ The Commission is given wide ranging powers under section 13F. These include the overseeing, supervising and

³¹ This should not be confused with the Presidential Black Economic Empowerment Advisory Council established in 2010 as originally mandated by the 2003 B-BBEE Act.

promoting adherence to the act; receiving complaints of B-BBEE and investigating such complaints; receiving reports on BEE compliance from all the spheres of government, public entities and organs of state and from all JSE listed companies in their compliance with the B-BBEE Act (Section 139). Because the commission was constituted in June 2015, it is too early to make any meaningful comments on its operation and effectiveness.

2.7 Conclusion

At its inception, South Africa's BEE policy was a product of continuous negotiations between the ANC government, white capital and labour. These negotiations were carried out under different banners starting with the DME for the mining sector and ending with the DTI for the economy at large. There were also negotiations for establishing sector transformation charters called for by the MPRDA and the B-BBEE Act. As a result different industries have concluded charters that prescribe their commitment to the empowerment blacks. The policy thus represents a compromise between the ANC government which had given up its long standing policy of nationalisation, and white capital which understood the need for some form of expanded black participation. The process of negotiations has been long and frustrating to those who expected faster transformation.

While the MPRDA, Mining Charter, The B-BBEE Act, the Generic Score Card and Codes of Good Practice provide the broad policy framework, they were short on the implementation details. For example, the Mining Charter does not specify targets apart from those that concern equity ownership, control and managements. The Generic Score Card has targets and weighting for all seven elements (equity ownership, affirmative employment and skills development, management and control, procurement and enterprise development). Just like the Mining Charter, the Mining Score Card has targets only for equity ownership and board representation, and does not state that mining companies are supposed to have a compliance certificate. Instead, this Card stipulates that companies are supposed to present a report to the DMR. The Mining Score Card's silence on the implementation details has fortuitously mandated white and foreign-owned companies to work out the nitty-

gritty of how to implement the policy. The white and foreign-owned companies became responsible for deciding which partners to choose, which assets to sell, what conditions to attach and how to organise the funding. From the start, the government did not create monitoring and evaluation institutions for its BEE policy. Apart from the recognition of limited financial capacity at national level, the government relies much on its traditional financial institutions (the IDC and DBSA) and few others, and has not put in place extra measures to source funds. It is expected that the constitution of the Broad Based Black Economic Empowerment Commission will establish better measures to help the implementation process.

The BEE policy represents efforts by government to intervene in the economy in favour of those who have been disadvantaged by apartheid. To succeed in pushing forward the BEE agenda, the policy-makers need to learn from the experiences of other governments that have intervened in their economies to correct the past wrongs or to support the entrepreneurial class to bring about economic growth. It is for this purpose that Chapter Three closely analyses cases of state intervention.

3 Government Economic Intervention and Economic Empowerment

3.1 Introduction

This chapter links South Africa's B-BBEE policy to the general debate on the ANC government's attempts to redress the negative impact of the apartheid government's discriminatory policies and to open preferential opportunities for the historically-disadvantaged peoples. The reasons as to why the government intervened and developed the BEE policy were highlighted in section 1.4 above. Chapter Two has explained the change in the ANC's move from intervening through nationalisation in order to change the overwhelming control of the economy by the white capital and introduce the BEE policy to empower blacks. In the mining industry, the government is using licensing as a regulatory instrument to enforce entry of blacks. As indicated in Section 1.4 of the thesis, it was indicated that blacks entering in the mining industry face various limitations; these include lack of funds, problems in accessing land in mineral rich areas and difficulties in accessing data on mineral ventures they purchase. The equity transfer to blacks is left entirely to the market forces and blacks depend on capital markets and mostly white companies to provide them funds and offer collateral. There is limited government support. It was argued that the government need to deal with the limitations blacks in the mining industry face.

This chapter starts by highlighting circumstances under which the free market system allows government intervention to deal with market imperfections or also known as market friendly intervention or functional intervention mechanisms. As indicated by Todaro (1971) and Lall (1996) economies worldwide cannot avoid such interventions. Iheduru (2004) Capps (2012) and Lynch (2012) in Chapter One of this thesis talked about apartheid policies creating market failures that have led to skewedness of skills, employment opportunities, land ownership and the country's capital in favour of whites. It is argued in chapter one that there is hence the need for intervention beyond using market forces (section 3.2).

However, there are other justifications for government intervention. Intervention has also been justified in terms of dealing with past injustices of racism and discriminations, colonial legacies, social injustices or any other forms of discriminations for reasons that have resulted in economic imbalances on a segment of a country's population. It is important to highlight the fact that there are precedents; namely, the USA, Malaysia and Nigeria. The USA affirmative action policy (Tomasson, Crosby and Herzberger 1996) was initially aimed at its black population, but later expanded to other minority groups. The similarity between affirmative action in the USA and BEE policy, is that both aim at countering racial discrimination policies that had denied opportunities to blacks. The USA did not go to the extent of transferring equity to its black population but much on affirmative action at the workplace and expanding education and business opportunities. Malaysia also dealt with racial imbalances and demanded the transfer of equity ownership, control and management to those who were previously disadvantaged, the Bumiputeras (Lall 1996:155-157; Simpson 2005). Nigeria's indigenisation policy sought to promote local entrepreneurs in the face of continued external domination of the economy (Kohl 2004:354; Uche 2011:12). Although the three cases somehow differ in the manner they operated and the outcome, each sheds light in a unique way on government intervention in the economy. There is a need for South Africa's BEE policy-makers to learn from these precedents.

Critical in the implementation programs in the USA, Malaysia and Nigeria was going beyond the legislative removal of racial policies and establishing institutions to oversee the implementation of the policies and using other supporting mechanisms. Nigeria experienced both open and covert opposition from foreign companies and international pressure on the government from the IMF and the World Bank and hence failed to achieve indigenous control of the economy (Leslie 1976, Wilson III 1990, Kohl 2004, Andreason 2008, Uche 2011). Even the USA could not cushion itself from oppositions. Section 3.3 below provides snapshots of the three cases.

The study had to go beyond economic empowerment experiences. Section four of the chapter highlights the East Asian experiences of rapid economic growth as a result of

government economic intervention. It pays particular attention to Japan which is a typical free market economy that used intrusive and selective intervention. Its success has been associated with government control of financial resources; the use of incentives to selective industries and firms and grooming of entrepreneurs (Lall 1996; Wade 2004). The last section looks at case of Japan's intrusive and selective intervention.

3.2 Government Economic Intervention: Market Friendly Measures

This section focuses on government's economic intervention in the free market system pursued for correcting market failures. Two basic economic principles underpin the working of the free market system. The first is the assumption that self-interested individuals should be left free to make their economic decisions. This idea goes back to Adam Smith (1723-1790) who argued that:

“When each person makes the best economic choices possible, that choice leads, as if by an invisible hand to the best economic outcome for the society as a whole. This best social outcome arises not because people pay attention to the needs of others but from self-interest.” (Parkins 1990:22)

The second is the self-regulating nature of the market as mainly driven by the price system. The use of price system combined with a competitive environment determines what goods are efficiently produced and in what quantities (Mohr and Fourie 1995:29-44, Stiglitz 1996:2-31). The working of the price system requires limited government interference in the economic life of individuals. The government should therefore be concerned with the protection of property rights, the maintenance of law and order and the provision of limited number of goods and services. Underlying these two principles are a set of assumptions. These, according to Collard (1972), are that: individuals strive to maximise utility and make decisions based on rational expectations; firms maximise profits; there exists a large number of buyers and sellers in the market; firms produce homogeneous products and experience no barriers to entry or exit; there is free factor mobility; availability of perfect information to economic participants and the absence of externalities.

If these assumptions are met, the market is assumed to reach Pareto optimum allocation of resources or Pareto efficiency (Stiglitz 1988:65). If the assumptions are not met, or are just absent or violated by economic players, perfect competition may not be realised and market failures will occur, ultimately generating inefficiencies in the economy (Lipsey 1989:399-402; Stiglitz 1996:159). Thus, the main failures are: the failure of the market to ensure competition; to produce public goods; to provide incomplete, complementary and missing markets; to deal with externalities and exuberant irrational pessimism; to deal with information asymmetry, to equitably distribute income, and not to have the capability to adjust the economy back to equilibrium when there are demand and supply shocks. The government has at its disposal numerous policy measures to deal with the mentioned market failures. These are further discussed below, albeit in abstract terms, as the aim here is to have a general understanding and not to immerse in the theoretical jungle.

Competition may be affected by the existence of monopolies, oligopolies and cartels. Firms in such industry structures may experience economies of scale that enable them to earn abnormal profits, engage in uncompetitive behaviours such as collusion and price fixing and employ other restrictive measures. These may act as barriers for new firms to enter in the industry. The government then is justified to intervene to restore competition by passing anti-trust laws and regulate monopolies' behaviour and break their powers in order to move the markets closer to competitive levels. The government may even resort to nationalisation, an issue that always creates controversy among economists (Stiglitz 1993:400-516, 1996:161, 2010:31; Tangri 1999:27; Samuleson and Nordhaus 1989:43-44).

As noted in Section 1.3, the history of South Africa's economy was characterised by monopolies and conglomerates which had and are still having high concentration levels. Thus, when the ANC came to power in 1994, the economy was dominated by six conglomerates that were owned by white capital, a situation which still exists. From its 1955 Freedom Charter, the ANC government aimed to nationalise monopolistic industries and break the concentrated nature of the economy but moved away from this policy stance and opted to use regulations to allow all race groups

including blacks, to freely exploit the country's economic opportunities. This has become the main objective of the BEE policy (Kantoor 1998, Randall 2000, Chabane et. al.' 2006). The relevant question that this thesis seeks to answer then is will the incorporation of blacks in the economy in the midst of such conglomerates' structure succeed?

Government intervention is also justified when the free market mechanisms fail to provide public goods, missing and complementary markets and deal with gaps arising from exuberant irrational pessimisms. Pure public goods are those that the exclusion principal cannot be easily applied (e.g., national defence, street lights) and those goods that have huge cost outlays (highways, railways, harbours, airlines, utilities such as water and electricity and telephone and postal services). The marginal costs for additional users on such goods and services are almost zero, implying more production of such goods can benefit many people without added costs. The private sector may not adequately provide quasi-public goods (health services, insurance, credit, education facilities, libraries and parks). Quasi-public goods render positive benefits to the society. The intervention measures involve the government itself providing them, funding their production or using incentives to induce the private sector to provide them (Stiglitz 1988:179-181). In the South African context, one needs to note the skewed nature of the provision of public services. Mbeki talks of two different economic worlds existing in South Africa, with the whites living in a rich and prosperous world and blacks in impoverished world with limited basic services (Mbeki 1998:71-72).

Incomplete markets are those that cannot be adequately produced by the private sector (such as insurance and financial markets). The private sector may choose one product which is profitable and leave the other. Missing markets are those that are not easily produced by the private sector (e.g., health and employees insurance, loan funds). Complementary markets are those that operate together (e.g., markets for cars and tyres). The markets may fail to deal with gaps arising from exuberant irrational pessimism that occurs when private firms produce too much of one thing or too little of another; consumers save too little to cover for the unexpected or for their old age

or health; private banks take more risk than required or buffer themselves from taking too much risk; firms invest too little in Research and Development (R&D) or protect their findings (e.g. through patents) for profit maximisation purposes (Stiglitz: 1988: 76-77). This is the reason behind governments (especially at early development phase) establishing banks, insurance, pension funds and offering other services that the private sector does not provide or is lagging behind with.

Firm activities may produce externalities. These are costs or benefits that affect third parties or people not intended for. For example, firms may not volunteer to refrain from producing goods and services that produce negative externalities (e.g., pollution) if the firms' costs increase. Also, companies may not afford to spend more on goods and services that produce positive externalities such as quasi-public goods explained above. The policy options for the government to intervene in such cases include increasing taxes, charges and fines or using regulations to discourage the production of goods or services with negative costs to the economy. Alternatively, the government may provide subsidies and other incentives to induce private firms to produce those with positive benefits, (Lipsey 1989:400; Stiglitz 1988: 217; Mohir and Fourie 1995:454).

Markets may experience information asymmetry. This occurs when one party in a market transaction has more or better information than the other. The disparity creates an imbalance of power in a transaction and can lead to adverse selection and moral hazards. Adverse selection occurs when an ignorant party lacks important information on the performance of the transaction, while moral hazard occurs when one party changes his or her behaviour and goes against agreements of the contract. The policy options for the government include: providing information to the public (e.g., information on dangers of drugs, cigarettes and alcohol and on benefits of certain activities such as inoculation) or use regulations that enforce disclosures. Disclosure forces firms to divulge information which otherwise they would have chosen to keep if it could be to their advantage. For example, important information concerning the value of stocks, and shareholder's dividends which are important for making decisions on whether to enter or exit the company. Firms that perform poorly

would have opted to hide such information or exaggerate their share value in order to trap less informed shareholders (Stiglitz 1996:159). The issue of information asymmetry is relevant between whites and blacks operating in the mining industry and came out clearly from the interviews carried out for this study as revealed in Chapter Seven.

Free markets fail to equitably distribute income. The neo-classical economists assume that income distribution occurs naturally when owners of factors of production receive what Mackintosh, M et al., (1996: 788) call primary income.³² However, there is a general agreement that resource ownership, wealth and income in free markets are unequal. As indicated by Samuelson and Nordhaus (1989:751):

“--perfect competition under laissez-faire could lead to massive inequality, to malnourished children who grow up to produce malnourished children to the perpetuation of inequality of income and wealth for generation after generation.”

Intervention then is justified for distributive justice purposes. These are wide issues that involve balancing economic opportunities, income and wealth issues that are partly guided by political decisions. Policy options for the government include using progressive taxation and economic empowerment and affirmative action programs. The BEE policy falls in this category. The problem, as indicated by Stiglitz (1993, 2010; 1996:693), is that justifications of government economic interventions for distributive justice purposes lack a model to emulate. This is because reasons that may call for such interventions and how a particular government deals with them and the outcomes may differ. This can be seen from the cases dealt with in section 3.3 below.

Economic activities in free market system are prone to periodic episodes of business up-swings (economic booms) and down-swings (economic recessions), resulting in unemployment and inflation. Until the 1930s, these disturbances were taken as

³² Mackintosh, M et al (1996:788) explains that primary distribution of income occurs naturally when resource owners are rewarded. Capital earns interest, labour earns wages and salaries, land receives rent and entrepreneurs get normal profits. It is also assumed that owners of productive resources that command higher prices would earn higher income than those who own lowly priced resources who would end up getting little incomes.

temporary and it was expected that, eventually, counter forces will restore the economy to its equilibrium or full employment. The 1930s great depression shattered this, forcing governments to intervene. This was championed by Keynes (1936) who called upon governments to introduce demand management measures in particular expansionary fiscal policies in order to move the economies from low demand (recession) to higher levels of demand to help the economy to gain its equilibrium (Brue 1994:441). These became acceptable government policy until the early 1970s.

As a result of the 1973 world oil crisis and growing government budget deficits, there was a swing against government economic intervention and a call for deregulation and privatization. This coincided with the imposition of structural adjustment programmes in African and Latin American countries in the 1980s (Sachs 1989; Gregory and Stuart 1995; Campbell 2009 and 2013). According to Gregory and Stuart (1995:100), from the mid-1980s a call for limited government worldwide was a result of concerns about escalating expenditure and prolonged government deficits. Countries like the UK, Canada, Australia and the USA propagated limiting the role of the state in the economy. The 1998 Asian financial crisis and the 2008 global crisis have resulted in governments reverting back to intervening in order to mitigate the negative impact of the crisis (Tanzi 2011:6-9).

What the examples stated above point to, is the fact that government intervention in the free market system cannot be avoided but only the intensity of the intervention changes from time to time. The aim of market enhancing measures, as indicated by Todaro (1971:1-3), is not to fight the markets but to support them in order to restore a situation that could not have been possible under the free market mechanism. Table 3.1 summarises the types of market failures and the instruments used by government to address them.

Table 3.1: Summary of Market Failures and Major Instruments to Deal with them

Type of Market Failure	Examples	Instruments Recommended
Economic Inefficiency	(1) Monopoly	Antitrust Laws, Price Regulations
	(2) Negative Externalities	Anti-pollution regulations
	(3) Positive Externalities	Subsidize worthwhile activities
	(3) Missing markets	Government Provision(e.g., banks)
	(6) Market irrationality	Government Provision
Economic Instability	1) High Unemployment,	Monetary policies, Fiscal Policies
	(2) Low Economic Growth	
	(3) Inflation,	
Social-Economic Inequalities	(1) Unacceptable level of income inequality	(1) Progressive Taxation, Food stamps, Welfare programmes
	2) wealth inequality	(2) Balancing wealth creation initiatives
	(3) inequality of economic opportunity	(3) economic empowerment/affirmative action
	(4) Inequality in social services	4) Selective government provision to those affected

Source: Adapted from Samuelson and Nordhaus 1989:47 with additions from Lipsey (1989); Stiglitz (2010)

Not mentioned in the above measures is the quest for modern democracies to ensure a civil service that is free from rent seeking and corruption; that uphold democracy and capably supervise the delivery of a limited set of public services (Tangri 1999:4). These few examples simply indicate that government intervention is part and parcel of any government and changing circumstances always call for new measures.

Despite the continued practice of government economic intervention for enhancing of free market mechanism, there still remains open opposition to the practices. Opponents point to the existence of government failures, caused by the inability of the policy makers to obtain appropriate information which is necessary to enable policy makers to rank the electorates' individual choices. Policy makers may also fail to formulate policies that will benefit or satisfy the general public and may have limited capacity to oversee the implementation process or lack well-defined measures to gauge the successes (Lipsey 1989; Tanzi 2011:73). The policy makers may also fail to meet the policy objectives, or policies may benefit wrong and unintended beneficiaries. These include interest groups, politicians and government employees who are actually already better off. Benefitting wrong beneficiaries allows ultraism and rent seeking to set in the society (Robinson 2000). Whether

regulations work or not, there are always possibilities of calling upon other sets of new regulations to deal with the consequences. To Von Misses (1998:3), the chain will go on and on and will be hard to break. We see below some of these criticisms in the cases where government intervention is justified in response to dealing with economic imbalances. The following sections deals with such cases.

3.3 Government Economic Intervention in Response to Economic Injustices: Lessons from elsewhere

As noted earlier, post-apartheid South Africa's economic empowerment policies have its precedents elsewhere. Such policies have been in response to slavery, past discriminatory legislations; colonial or national policies that neglected a segment of the country's population or geographical location or gender; cultural reasons (such as caste system) or just a bad outcome of past and ineffective policies. Different names have been used to explain such policies; 'affirmative action' (USA), 'economic empowerment' (Malaysia) and 'indigenisation' (Nigeria and other African countries). Below the thesis examines the experiences of these countries.

3.3.1 Affirmative Action in the USA

Affirmative action in the USA³³ did not emerge as a single grand plan but develop gradually as the federal government under pressure from human rights movements moved to open employment and other opportunities for minorities in the public institutions. The term, minority, initially referred to Afro-Americans or Negro-Americans or simply blacks. These are people who had arrived in the USA as slaves from the African continent. The term was later extended to include people with Hispanic and Asian origins and other minority groups.

As indicated by Tomasson, Crosby and Herzberger (1996), the elimination of slavery did not wipe out segregation and discrimination against blacks. These were deprived of political, social and economic freedoms resulting in the uprising by black human

³³ For a better treatment of affirmative action in the USA see George, C and West, C (Eds.). 1996. *The Affirmative Action Debate*, NY, Perseus and Rubio, P, 2001. *A History of Affirmative Action* Oxford, University Press of Mississippi.

rights movements in the 1960s. It is in response to these demonstrations that President Kennedy issued Executive Order 10925 in March 1961 that declared affirmative action policies to be used. Affirmative action therefore:

“---prohibited discrimination in government employment and contract programs, and it required its federal contractors to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, creed, colour or national origin.” (Tomasson, Crosby and Herzberger 1996: 126)

The policies allowed blacks to use public facilities, benefit from public jobs, federal contracts and with time these were expanded to other areas. Under Title VII of the Civil Rights Act (1961) section 703(a), discriminatory employment practices were made unlawful and employers were instructed not to:

fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his[sic] compensation, terms, conditions or privileges of employment, because of such individual's race, colour, religion, sex, or national origin.” (Tomasson, Crosby and Herzberger 1996:130)

When President Kennedy died the course of affirmative action was taken over by President Johnson. He recognised the need of dealing with past discriminations that went beyond the elimination of discriminatory laws to include preferential support for blacks. He stated that:

“Freedom is not enough....You do not take a person who for years had been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “You are free to compete with all the others” and still justly believe you have been completely fair.” (Tomasson, Crosby and Herzberger 1996:132)

Thus, in 1965, the government passed the Small Business Act. Section 8A of the act included minority-set-aside clauses which called upon receivers of federal funds for government related construction contracts to reserve a portion of government contracts they received to firms owned by minorities. The Act also demanded that every contractor who received government contract to the value of US\$50,000 and employed 50 people or more to develop a written affirmative action plan which

included the overall labour pool and quota analysis of how much were women and other members of minorities and the timetable for achieving affirmative action targets.

In 1969, the Philadelphia plan (also known as the Philadelphia Order) under president Nixon required federal contractors in specific skilled trades to devote percentages of the dollar value of federal contracts to African Americans. In 1971 the Office of Minorities Business Enterprises (OMBE) was created to provide support to minority business enterprises. This included technical and management assistance and the creation of demonstration projects to give minorities, hands-on experience (Executive Order 11625 of 1971). At the same time, the department of labour was called upon to ensure that every government contractor issued an “evaluation of utilisation report” that indicated numerical number of minority group representation in various job categories (ibid). In 1973 the Rehabilitation Act was passed. This required all federal agencies, public bodies and institutions such as universities, hospitals, police forces, to ensure that all races were equally represented. An Equal Employment Opportunity Commission (EEOC) was created to enforce the Act (Tomasson, Crosby and Herzberger 1996:12-19). In short, there was a use of various presidential orders and acts. Other orders were applicable to various states that this study’s capacity does not allow to comprehensively discuss.

The implementation of affirmative action in the USA faced overt and covert resistance from those who were required to comply. This resulted in minorities experiencing difficulties in getting jobs, business opportunities and placements at higher learning institutions. With regard to jobs, white-owned companies tried to protect their business interests and claimed that minority companies lacked appropriate skills and that the nature of jobs in some industries such as construction depended much on performance and trust which was easier with the old partners or ones with good referrals. White-owned companies therefore requested for waivers from the set aside requirements. When this was not forthcoming, they resorted to

take their cases to courts (Sowel 2004).³⁴ The minorities had to get help from government institutions or organisations established to foster the courses of minorities. These include the Minority Business Leagues which negotiated contracts on the minorities' behalf. The leagues, however, did not choose everybody but employed meritocracy and at the end chose those with reputation, competence and reliability. This was tough for starters (George and West 1996).

The court cases that started in 1996 limited the application of affirmative action policy in the USA. The California Civil Rights Initiative succeeded in obtaining a court order that outlawed the use of race and gender as a determining factor for admission to state colleges and universities, public employment and the allocation of state contracts on the grounds that affirmative action violated the Civil Rights Act (Tomasson, Crosby and Herzberger 1996: vii). This led to the spread of court challenges against affirmative actions in other states including Washington, Michigan, Nebraska, Arizona, Connecticut, New Hampshire and Oklahoma all of which were successful. This does not imply that the policies were completely scrapped but rather limited in their application.

One of the opponents of affirmative action was Sowel (2004), a professor of economics and an intent follower of liberal ideologies. He argued that affirmative action policies were against the principles of capitalism which is an engine of opportunities in the USA. He also argued that he was unable to support affirmative action, as he deemed it to be anti-capital and to be creating racism and economic imbalances. To accept affirmative action was like undermining the principles of market economy that the USA profess to uphold. Open and free market principles do not recognize race or gender, but espouse private ownership of property, strive for improvement of efficiency and profit maximisation. Thus, Sowel continues, it did not matter even if white businesses hired blacks at lower wages and increased profit, as this would be capitalism. What matters to Sowel is how those hired perform. Sowel

³⁴ Sowell cites a case of J.A. Croson - a white-owned company which in September 1983 submitted a bid to install stainless steel plumbing pipes and requested a waiver from the set-aside requirements as there were no qualified minority companies to partner with. Authorities at Croson argued that the city council had violated several laws and went against the USA constitution that recognises all people are equal in front of the law. The legal battle ended up in the Supreme Court and lasted for 3 years.

feels that blacks received low pay because they enrol for inferior careers which paid less and those at universities published less and there were few that held PhDs. Blacks in business failed because they lacked finance, had limited business knowledge and experience, poor financial management, were unreliable partners, lacked an entrepreneurial spirit, did not want to take business risks and join the formal economy but prefer to work in the underground economy “out of the back of their pick-ups” (Sowell 2004: 18, 85-87).

Sowell continues to argue that affirmative action policy created a mentality of dependency and reinforced unproductive psychology that left whites with ‘an exaggerated superiority’ and blacks with ‘exaggerated inferiority’ where to the whites, any black who held a reputable position did not really deserve it. He further thinks that helping blacks through affirmative action sends a message that blacks were not capable to emerge out of their situation based on their own merits. He feels that affirmative action employees are being judged lowly, which by itself was demeaning to minorities (Sowell 2004: 86-87). Referring to education in particular, Drake and Holsworth (1996) says that the policy resulted in a mismatch effect where incapable and unprepared minority students who were accepted in highly demanding education institutions dropped out, a situation that lowered the bar (especially in law profession) and denied those who strive for excellence to achieve their dreams.

To Sowell, the policies failed as a tool for dealing with race inequalities, did not benefit those, the very poor and disadvantaged, who really needed it. Instead, the middle and upper class groups who already had better education and better job opportunities grabbed more openings unjustifiably. He says affirmative action policies did not sort out discrimination either, but resulted in “reverse discrimination that replaces racism and sexism” against the white race and created discriminations even among minority groups themselves. The argument, according to Sowell (2004:19), is that affirmative action gave rise to other unintended consequences that included corruption, rampant fronting and abuse of power by bureaucrats (ibid). In conclusion, Sowell’s solution to deal with outcome of race discrimination in the USA is to leave the blacks to the mercy of the market forces.

Some of the criticisms against affirmative action in the USA recall those that have been raised in South Africa against the BEE policy. These include: fronting, cronyism, political patronage, betrayal of the poor people and the exacerbation of inequality among blacks (see the discussions by Randall 1996; Gothenburg University 2001; Gqubule 2006; FNB 2008; Mathe 2008 and Cargill 2010 in Chapter One of this thesis).

It is remarkable that affirmative action in the USA was championed by the Presidents, in particular, Kennedy, Johnson and Nixon. These realised that a mere ending of discrimination through legal enactments and decrees was not enough to allow blacks to compete successfully in the open market. The presidential leadership created supporting institutions like the Office of Minorities Business Enterprises and the Equal Employment Opportunity Commission to monitor implementation and offer support to minorities. It is these institutions that were trusted to ensure that companies and public institutions developed concrete affirmative action plans and made follow up on these plans. It is these actions that ensured compliance.

It is important to note the opposition and resistance to affirmative action by those that once benefitted- in particular the white businesses. What is critical is that public support decreased with time. While there was enough public support in the 60s and 70s, a time that the office bearers of the country (Presidents) supported the policy and responded to pressures from the civil society. By the early 1990s, the political environment had changed and hence limited political support. There were endless court cases calling for the end to the policies. The call for scraping of the policies is an indication that such policies could not be sustained indefinitely.

Despite affirmative action losing its appeal, other scholars like Tomasson, Crosby and Herzberger (1996) said the challenge that still remained in the USA was looking for a colour blind or alternative policy to affirmative action. This was because minorities still could not be fully integrated in the society. These critics argued that minorities still resided in areas with poor housing and poor quality of services compared to other races. The writers above continue to say that the social realities

that blacks face may affect their chances of performing better in schools and going into elite schools and then having better jobs in the future. The limited economic opportunities that minorities face does not call for the use of the ability to pay principle as this principle may still leave many out of the picture in terms of affording better housing and education. The ability to pay principle which is one of the strong tenets of market principles argue that a buyer is to afford a market price of goods and services produced. Tomasson, Crosby and Herzberger (1996) continue to say that even the use of incentives may also leave some unattended. These are challenges that policy makers in South Africa have to keep in mind as it implements its black economic empowerment.

3.3.2 Economic Empowerment in Malaysia

Earlier, this Chapter argued that scholars in South Africa have looked at Malaysia's empowerment policy as a model. It is important for the study to explore Malaysia's route to empowerment, in order to draw lessons from the country. Malaysia's economic policy sought to address economic imbalances that evolved slowly over time and affected the indigenous Malays, also known as Bumiputeras (whose literal translation is sons of the soil). This thesis uses the terms Bumiputeras or indigenous Malays interchangeably.

In May 1969, riots erupted in Malaysia immediately after the elections. The Bumiputeras demanded greater participation in the economy. They constituted 60 per cent of the population while the remaining 40 per cent, (referred to as non-Malays), was made up of the Chinese who had been brought in to work in the mines; the Indians who came to labour in the sugar and coffee farms and; white settlers of the former colonial masters – the Portuguese, Dutch and British. The indigenous Malays became marginalised as the country developed and moved towards independence. By the 1950s, 80 per cent of them were living in rural areas, having poor education and housing, depending mostly on subsistence agriculture growing mainly rice (paddy). Around 49 per cent of them were living below the poverty line and formed the bulk of the unskilled labour reserve and the few were employed by the army (Sundhir 1983:3). Herbert (1998) argues that the main barrier to Bumiputeras' participation in

the economy and being marginalised was not actually the outcome of racial laws but rather economic circumstances that left them out of the picture of the main stream economy.

In an effort to change their predicament, both the first and second Bumiputera Economic Congresses in 1965 and 1968 had called for the reorganisation of the economic system. Nothing much was done and it is this lack of response from those who were in power that fuelled the May 1969 riots. The government was forced to review its economic policy and came up with the National economic policy (NEP) that became operational in 1971.

Lall (1996:154) divides Malaysia's economic intervention programme into two phases. The first started with the NEP and covered the period 1971-1985, which focused on improving the economic situation of the Bumiputeras to enable them to participate more in the economy (economic empowerment) than before. This does not mean NEP initiatives stopped in 1985, but, rather, it changed its focus to dealing with hurdles experienced. The second phase started with the New Development Policy (NDP) which included an industrial Master Plan (1986-1995) and was part of its 'look east' policy which tried to imitate the New Industrialised Countries (NIC's) economic model of selective industrialisation. The main government's focus in the second phase was to provide critical economic factors for industrial development in sectors that were seen important for the country's growth (Lall 1996:155-157; Simpson 2005). Of interest to this study are the economic intervention programmes that were pursued by NEP.

NEP was premised on government's direct involvement in the national economic development process and the creation of a rapidly expanding economy that would allow an increase in the Malays' share of the modern sector without causing an absolute decline in non-Malays participation, a program referred to as the expanding pie theory (Mandla 2006:14). The policy became an intrinsic part of the country's long-term planning which was conducted in a series of national development plans spanning a period of 20 years (1971-1990). It called for increased government

ownership and growing participation of Bumiputeras in the economy through a series of economic empowerment programs. To empower the Bumiputeras, NEP had three main aspects: equity ownership, affirmative employment and enterprise development. It was necessary to increase government ownership. Subsequently; there was a rapid growth in state-owned companies, state agencies and statutory bodies. These reached 700 by mid 1980s and 1,000 by the end of the 1980s. They were spread across all economic sectors such as water, telecommunication, palm oil, aviation, agriculture and fishing³⁵. The state-owned enterprises were used not only for Bumiputeras to get employment and managerial expertise but also for them to buy equity.

Equity ownership required the non-Malay companies to transfer up to 30 per cent of their equity to Bumiputeras by 1990. The target was to have a 30:40:30 ownership spread. This would translate into 30 per cent equity in Malay hands, 40 per cent in non-Malay, principally Chinese and 30 per cent for foreigners. Initially, the enterprises with less than Malaysian dollar (M\$) 0,25million equity were excluded from the policy (Mandla 2006:28). Although the targets differ, the B-BBEE Act (2003) the MPRDA and the Mining Charter that directs economic empowerment in South Africa, have adopted some of these elements. The policy makers had to deal with other impediments that limited the participation of Bumiputeras in the economy. These include Bumiputeras' lack of finance, low skills, poor education and limited entrepreneurial talents.

A series of legislations and programmes were instituted to support the programs. In 1975, for example, government passed the Industrial Coordination Act. The Act was crucial in controlling the growth of the manufacturing sector and making sure that the manufacturing companies complied with the selling of 30 per cent equity to Bumiputeras. The government used licencing to enforce compliance. The Minister of

³⁵ Lall (1996: 153) mentions some of these which include the Federal Land Development Authority (FELDA); Food and Marketing Authority (FAMA); Malaysian Agricultural Research Development Institute (MARDI); Rubber Industry Smallholders Development Authority (RISDA); MAJU IKAN (Fisheries Board); MAJU TERNAK (Cattle Board); Urban Development Authority (UDA); State Economic Development Corporations (SEDAs) and the Malaysian Industrial Development Foundation (MIDF)

Industry was given powers to refuse the licensing of any company if it did not have a significant shareholding or employment of the Malays. The government also created the National Equity Corporation (Permodalan Nationale Berhad – PNB) as a state holding company or trust company that was used to buy shares and warehouse them on behalf of the Bumiputeras until they had the funds to do so (Cargill 2010:72; Mandla 2006:31). This was an essential vehicle of share transfer to ordinary Malays who were allowed to buy stocks at lower prices (at a discount) than other investors. Banks and other creditors advanced credit for purchasing of the shares. The government established financial institutions such as the People's Trust Council (MARA), Credit Guarantee Corporation (CGC) and Bank Bumiputera to offer financial support to aspiring Bumiputera businesses and those who sought to buy shares. In its first attempt, the PNB bought 660 million shares (equivalent to Malaysian \$ 1,5bn) and by 1990 it held shares in 162 companies, 107 of which were publicly listed. About 44 per cent of qualified population benefited from the share scheme (Mandla 2006:31).

The government used its procurement facility to give preferences, especially to the SMEs owned by Bumiputeras to finance them. A number of state agencies were created to facilitate the creation of enterprises owned by Bumiputeras and supported them and ensured their growth. The support came in terms of providing Bumiputera entrepreneurs with technical skills and management expertise and other supports. This led to the mushrooming of small scale business that used simple technologies such as wood-works, textiles, simple engineering works, assembling, packaging and food processing ventures (Lall 1996:151-155).

Recognising the limited and poor education among the Bumiputeras, the government embarked on restructuring the whole education system - from primary school to university by changing the language of instruction at school and established a quota system for school and university placements. Thus: 55 per cent of university entrance positions and 4 out of 5 scholarships were reserved for Bumiputeras and quota admission of 3:1 (3 Bumiputeras to 1 non-Bumiputera) was introduced in public schools. Malay became the language of instruction breaking English language

barriers that the indigenous Malay faced. The restructuring of the education system helped to improve Bumiputeras' education and paved way for affirmative employment. It was expected that the rapid education expansion and the education quotas would facilitate the implementation of the 4:1 (4 Bumiputeras to 1 non-Bumiputera) employment formula that the government suggested. In the effort to reduce poverty and close the gap in social services, the state embarked on the rapid expansion of social services: housing, health, education and public utilities. A target was set to reduce absolute poverty from 49.3 per cent of the population in 1970 to 16.7 per cent in 1990 (Mandla 2006:31; Jesudason 1990:52).

In its twenty years of government intervention (1971-1991), NEP recorded some success and a few are noted here. First, was raising Malay ownership from 2.4 per cent by 1970 to 20-21 per cent in 1990. Second was maintaining a growth rate of around 8 per cent per year with the exception of the 1985 – 1986 economic recessions. Third was significantly increasing university enrolment for Bumiputeras. This was made possible by the use of Malay as a language of instruction and the quotas system in enrolment and in offering of scholarships. Fourth, rural poverty was brought down from 68.3 per cent in 1970 to 46.1 in 1980 to 21, 9 per cent in 1990. Poverty alleviation programmes involved other policies, including the distribution of land where by 1985 1.7million hectares of land were developed for the settlement of 224,700 families under the Federal Development Agency. Lastly, employment for Malays in the public sector increased. By 1990 non-Bumiputeras accounted for only 15 per cent of public employees. In manufacturing, Bumiputeras' employment increased six fold from 22,000 to over 1, 3 million between 1970 and 1990 (Jomo ND).

However, there have been a number of criticisms of NEP and its implementation. The most remarkable ground for opposition accused NEP of corruption, patronage and cronyism. It has also been noted that cronyism was rampant and trust agencies were used for the benefit of the few as a result of NEP. Both Jomo (ND) and Cargill (2010:78) say that cronies, that is, those close to the political elites, benefited from economic empowerment programs, as they were given preferential access to

privatized assets (at cheaper rate), state contracts, ministerial appointments, executive roles in state agencies and were allocated stocks in state-owned enterprises at a price well below market prices (Jomo ND:6). When cronies faced bankruptcy, the government bailed them out. For example, during the 1985/86 Malaysian economic crisis and the 1997/98 Asian crisis, the state protected certain firms from bankruptcy and gave them more loans. Not all Bumiputeras benefited, and this resulted in the growth of income inequality within the Bumiputeras. To Cargill (2010:78), the empowerment policy in Malaysia failed to create a genuine productive Malay business class, as those who entered either joined the large businesses that were established by previous regime or were just supported by the regime to survive in business.

Lall (1996:162) and Cargill (2010:68) mention the occurrence of fronting practices known as 'Ali Baba Practice.' Fronting occurred as the 'Alis', pseudonym used to refer to the Bumiputeras who mostly are elites and hold leadership positions in the party and the Babas which refers to the non-Bumiputeras, exchanged papers of business transactions. The 'Alis' used their ancestry of being Bumiputeras to obtain licenses and then sold them to the 'Babas' in the foyers of luxury hotels and ceased to have something to do with the companies. This implied that the Bumiputeras did not control the business *per se* but allowed themselves to be bribed out of the day to day activities and making decisions on the companies they created. Fronting resulted in the economy continuing to be controlled by the MNC (58.9 per cent by the mid-1990s).

Despite the weaknesses outlined above, a combination of factors account for Malaysia's success. First and foremost was the creation of institutions and mechanisms to support the implementation of the national empowerment policy. Second was the linking of empowerment to rapid economic growth, the 'expanding pie' model which in a way helped to assimilate the Bumiputeras. For most of this period, the economy grew at 8 per cent per annum. The third concerned harnessing the NEP policy to alleviate poverty, so as to improve the lives of rural dwellers and the education system. These are the lessons that South Africa needs to learn.

Regrettably, the emergence of fronting and rise in corruption and patronage remains a sore point. Patronage as noted in section 1.4, represent a form of primitive accumulation and class formation and is wide spread in developing countries (Beresford 2015, Kelsall 2013, Booth and Mutebi 2012).

3.3.3 Indigenisation in Nigeria

Indigenisation refers to an empowerment process in which the government uses preferential policies to promote the participation of citizens (indigenous people) in their economy. This may involve restricting areas or economic activities to citizens or requiring foreign owned companies to sell percentages of their equity to citizens (Wilson 111 2008:401).³⁶ The difference between BEE policy and indigenisation is the fact that whites who are required to sell equity to blacks are also citizens and regard themselves as indigenous.

The quest for indigenous Nigerians to play an increasing role in the economic landscape of the country started with the government requiring the foreign-owned companies to cut the number of expatriate staff and hire and train Nigerians. The program was known as Nigerianisation. It aimed at ensuring that Nigerians manage and have control of foreign-owned companies. This program used quota allocation and to that effect, the Expatriate Quota Allocation Board was established in 1966/67 to enforce Nigerianisation but the country's civil war disrupted its implementation (Kohl 2004:352). The board was ineffective in ensuring foreign-owned companies comply and in the end its implementation depended on moral-suasion (Rimlinger 1972:1).

The civil war in which the federal government fought to keep Biafra that had declared independence from the federation (1965-1972) enhanced a sense of nationalism among the citizens resulting in the call for greater citizen participation in

³⁶ For a detailed discussion of indigenisation in Africa see Leslie, R. 1976. "Nationalization and Indigenization in Africa". *Journal of Modern African Studies*. Vol. 14. See also Andreasson S (2008). "Indigenization and Transformation in Southern Africa". British International Studies Conference, University of Exeter, 15-17 December. For a discussion on the relationship between state and business in Africa see Bond (2000) and Handly (2008).

the economy (Kohl (2004:353). Immediately at the end of the civil war in 1972, the military government passed the Nigerian Enterprises Promotion Decree policy commonly known as Nigeria indigenisation strategy. This took two forms: ownership of industrial assets by the government; and private ownership and control of foreign-controlled firms by indigenous Nigerians.

Ownership of industrial assets involved government ownership and private ownership of industries. Certain businesses were reserved to be exploited by indigenous Nigerians. In order for the Nigerians to attain control of businesses, it was important to increase the employment of Nigerians in skilled and decision making positions. This was to be accomplished while maintaining an inflow of foreign capital and skills (Rimlinger 1972:1). In particular, the decree compelled foreign-owned businesses in a large number of specified activities to transfer equity (wholly or in part) to Nigerians, to maximize local retention of profits and to raise the level of intermediate goods production. The policy demanded the reservation of certain enterprises (schedule 1) exclusively to indigenous Nigerians or associations.³⁷ Foreigners were barred from ownership of enterprises whose share capital did not exceed £200,000 or the turnover of less than £500,000 per year. If the above limits were exceeded, then, foreign ownership was limited to 60 per cent with the rest either owned by the government or indigenous people. Thirty three such enterprises were listed as schedule 2.³⁸ The decree came into force on the 31st of March, 1974, but the foreign-owned companies were given up to April 1 1975 to comply with the decree - only one year (Uche 2011:7, Rimlinger 1972:1).

In 1977, the government made amendments to the Nigerian Enterprises Decree, expanding the schedule 1 activities where Nigerian enterprises were to have 100 per cent equity ownership. The decree split the schedule 2 enterprises by creating schedule three enterprises. In schedule 2 enterprises, Nigerians were to own 60 per

³⁷ Included in this schedule was: advertising and public relations; block and brick manufacturing; haulage of goods by road; garment manufacture; radio; television; broadcasting and retail trade (except supermarkets (Uche 2011 footnote 24).

³⁸ These included: beer brewing, boat building, bicycle and motorcycle manufacture, bottling of soft drinks, construction, cosmetics, departmental stores, distribution and servicing of motor vehicles and machines, estate agency and wholesale distribution.

cent equity and in schedule three enterprises, 40 per cent. The time to comply this time was even shorter as the businesses were given up to December 31, 1978 to comply (Iwuagwu 2009:161; Uche 2011:17).

In both the 1972 and 1977 decrees, the government still demanded the inclusion of Nigerians on the boards and top management of foreign owned enterprises. According to Adejugbe (1984:588), placing Nigerians at the top of foreign companies had little effect on Nigerians having control of these companies, as the loyalty of such workers lied primarily with the firm they served. This made the government fail to assess the extent of control in practice.

To increase state ownership, the federal government established a number of state-owned industries and acquired majority shareholding in enterprises that were designated as the commanding heights of the economy – insurance, oil refining, automobile assembling and iron and steel. One of the largest state-owned industries is the National Oil Corporation. In its effort to control financial resources to support the indigenisation program, the government established the Nigerian Industrial Development Bank and the Bank of Commerce and Industry. In line with the decree passed in 1972, the government acquired 40 per cent equity in all the banks operating in the country increasing to 60 per cent by 1977 (Adejugbe 1984:580). The central Bank of Nigeria had to take into consideration the objectives of the indigenisation into account when formulating its credit control regulations. The regulations prescribed that specific percentage of commercial bank loans made to each industry were to be allocated to indigenous enterprises (Rimlinger 1972:6). The bank policy enabled a number of Nigerians to enter into the reserved industries as funding for these was made available by the banks that had now fallen under the control of the government.

The federal government established institutions to enforcement compliance. Some of these include the Nigerian Enterprises Promotion Board and Industrial Development Centres. Nigerian Enterprises Promotion Board had a function of administering the decrees and monitoring other institutions including the Industrial Development

Centres. These centres were established in various states of the country to help indigenous Nigerians with technical, managerial skills and offer loans. The central government took over the financing, management and administration of the centres in the states in order to promote SMEs.

The implementation of Nigeria's indigenisation policy did not pass without opposition and problems. Open and covert resistance used different devices to subvert the implementation of policy. Devices used included foreign-owned companies seeking exemptions from complying and bribing government officials for their enterprises to be classified as compliant. Other companies engaged in fronting. Fronting involved prominent Nigerians, referred to as the 'alhajis', who used their names to obtain licenses but instead of participating in business they collected money and other rewards from their foreign business counterparts and had nothing to do with the running of the companies (Kohl 2004:354; Uche 2011:12). Similar problems occurred in Malaysia in the form of the Ali Baba practice and now South Africa is experiencing what is called 'rent-a-blackie practice', as indicated in Section 1.4 of this thesis. Some foreign-owned companies resorted to paying out dividends to their own companies that exceeded 100 per cent net earnings and repatriated all their profits. Sabotage and resistance to the Indigenisation policy also involved foreign business owners plundering their businesses and declaring bankruptcy. Others wound up their businesses after selling shares to indigenous Nigerians (sometimes to fictitious Nigerians). In short, the implementation process lacked transparency and was beset by patronage and the government's lack of capacity to enforce compliance and to curb the subversive devices used (Adejube 1984:287-290; Uche 2011:18).

As we have seen in Chapter Two of this thesis, the issue of dividends has already started to feature in South Africa's implementation of the BEE policy. This is one of the challenges that have forced the amendment of the Charter which requires white and foreign-owned companies to pay black-owned companies dividends without considering the growth of the company (see section 2.4.1 of the thesis).

Problems that had occurred were similar to those that happened in the USA. The indigenisation program in Nigeria benefited those whom the policy was not intended– the non-indigenous Nigerians. Although the definition of Nigerians in the policy documents distinguished clearly between black indigenous Nigerians and other black foreigners who resided in the country, both Adejugbe (1984:589-590) and Uche (2011:8) said that, in some instances, the non-indigenous blacks who sounded like Nigerians, including those from neighbouring countries, claimed benefits conferred on indigenous Nigerians.

Another problem was unpreparedness on the part of the government in terms of strengthening of local human capital capacity. Although the federal state established Industrial Development Centres across states, these helped to groom small and medium scale entrepreneurs. According to (Kohl 2004:351-357), it was expected that the federal government would establish business or engineering schools or putting pressure on foreign firms to train locals who would take up roles at higher levels. This was limited. It is imperative to bear in mind the short time frame given for compliance, that is, only three years for the 1972 Nigeria Enterprises Promotion Decree and less than two years for the 1977 Nigeria Enterprises Decree. This might have contributed to lack of unpreparedness.

Nigeria's indigenisation policy was less robust after 1986 when the World Bank and IMF forced Nigeria to adapt the structural adjustment programmes (SAPs). Thus the 1989 industrial policy under SAP allowed foreign companies to own up to 100 per cent of all new businesses. Instead of indigenisation, the country's policy focus was now more on attracting foreign direct investments (Uche 2011:20).

What can be said from Nigeria's experience is that the South African government need to take cognisance of the factors that limited the success of the indigenisation policy in Nigeria. The government in particular should take into consideration the resistance by foreign-owned companies, the lack of proper planning and inadequate preparing of indigenous Nigerians who are capable to run business and participate in

higher level management, lack of mechanisms for monitoring and enforcement of the policies and the absence of penalties for non-compliance.

3.4 Government Intervention and Economic Growth and Transformation

Governments everywhere have gone beyond intervening in their economies with the purpose of dealing with market failures. Wilson (1994: 264) reminds us that in their process of development, countries in Europe had extensive public ownership, created highly protected industrial regimes and used incentives to support their industries. Along the way they made mistakes, wasted resources, created injustices but experienced economic advancement as evident today. Equally, the Newly Industrialised Countries (NICs)³⁹ which are typical market economies have intrusively and selectively intervened in their economies to achieve rapid industrial growth and economic transformation.

Government economic intervention as it was pursued in the NICs challenged the orthodox neo-classical position of limited government in the economy and sparked a debate on how to explain the rapid industrialisation that the NICs countries experienced. The World Bank's (1993) *East Asian Miracle Study* attributed these countries' successes to certain policies that the NICs countries pursued such as providing incentives between domestic and foreign investors, pursuing market friendly policies, ensuring macroeconomic stability, trade liberalisation and improving skills development (education). Lall (1996:109) and Wade (2004) while accepting the fact that these countries adhered to free market principles and pursued functional intervention policies argued that the NICs organised their markets and pursued "selective and targeted" or "intrusive intervention measures." While functional intervention involves dealing with the market failures, selective or intrusive intervention involves identifying certain industries that are considered important in the economy and hand-picking firms that performed better and

³⁹ Countries that form Newly Industrialised Countries (NICS) or New Industrialised Nations (NIEs) include Japan, Taiwan, South Korea, Hong Kong and Singapore. Yu (1997:48) does not include Japan

supporting them over a long period of time to ensure that they grow and stand international competition.

Kohl (2004:9) and Kaplan (1972:13-14) have referred to NICs economic intervention as “pervasive intervention” or “sponsored capitalism”, and also say that pursuing intervention of this sort is not anti-market or anti-capitalist but essentially geared at economic transformation and growth. According to Wade (2004:24-26), the NICs’ successes are associated with the state having central authority that gave it enough autonomy to maintain a relatively high degree of political order and to influence resource allocation in line with long-term national interest. The central authority enabled the NICs governments to govern the market by using incentives, controls and punishments of selected firms without much challenges from other factions of the economy. Labour and civil society could not challenge the central authorities because of the states established coalitions with businesses that guaranteed the businesses their survival and prosperity. In return, the businesses supported the authoritarian regimes to stay in power. The relations were cemented by the quest for both parties (the central government and the business) to build strong capitalist states that could counter socialist or communist tendencies that developed around other countries of the region like Russia and China. Critical also was the fact that government economic intervention programmes in these countries were part of their grand industrial programmes and long-term economic plans (Kohl 2004:9; Wade 2004:306; Rhee 2004; Schneider 2008).

). This is better exemplified by Japan whose experience is briefly discussed below.

3.4.1 Economic Intervention in Japan

At the centre of Japan’s development was the elaboration of a national long-term economic plan. This was spearheaded by public institutions mainly the Economic Planning Agency (EPA) which brought together business people, experts from universities and research institutions (including among others economists, engineers and physicists) and the press (Kaplan 1972:13). The plans indicated government’s broad economic objectives, pinpointed industry priority areas, elaborated industry-by-industry goals, specific targets to be achieved, the kind of incentives and support

mechanisms available and indicated strategies to be followed in order to achieve the broad objectives. In the 1950s, the industry priority areas were iron and steel, coal, ship building, and electric power. These were considered necessary to deal with the destructions caused by the Second World War. In the 1960s, the attention shifted to aerospace and electronics and later to heavy industries in order to support domestic consumption and promote exports (Chalmers 1982).

The government used extensive incentives (carrots) and coercive enforcements (sticks) in the implementation of its plans. In the priority areas, MITI for example provided incentives to the best performing firms. These were supported by the government offering capital and funds for operational costs, government loans, tax concessions, subsidies, liberal depreciation allowances, bailing the firms out at times of recessions by writing off their debts and even helping them to acquire foreign technology. Acquisition of foreign technology was done by government agencies which negotiated patent licenses with foreign companies. The government offered selected domestic industries tariff and quota protections and used its licencing powers to support mergers and acquisitions in order to build large corporations to compete internationally. These measures benefitted top vehicle producers like Toyota, Nissan, Mitsubishi and Isuzu (Kaplan 1972:37; Rhee 1994:18, 36).⁴⁰

Rhee (1994:36) and Hughes (1988:145) looked at other factors that explain Japan's success in its intervention drive. They say most important factor is it's the control of financial institutions. Before the mid-1980s, the government of Japan had control over the Japan Development Bank, the Export-Import Bank (EXIM) and the Small Business Finance Corporation. The Ministry of Finance had close ties with the Central Bank of Japan which controlled other private banks. The banks were coerced to support the national industrial policy and fund industrial projects in priority areas. In return, the banks were bailed out when they faced bankruptcy.

⁴⁰ Apart from the intervention policies both Lall (1996) Kaplan (1972) Japan's success is associated, with these factors including the existence of occupation forces in Japan that open avenues for the country to trade and new technology, a well- trained and diligent work force, a good education system, technical advancement and high level engineering knowhow, less unionised labour, lifetime employment policy where once retired government employees are allowed to move to business).

Another factor that contributed to Japan's success was the establishment of strong collaboration mechanisms between the government and business groups (Rhee 1994:36, 37; Hughes 1988:145-6). This included the creation of elaborate consultative machineries to allow government and business to exchange ideas and reach agreements on best strategies to be followed in changed situations. Charters were widely used to commit the industries to comply with government demands. The collaboration was administered by the Ministry of International Trade and Industry (MITI). For example the Electronic Industry Deliberation Council and the Bureau of Heavy Industry were directed within MITI which made it easier to support the companies involved in the earmarked priority areas and engage with different stakeholders. The authors above continue to say that the collaboration between the government of Japan's and the businesses was also strengthened by the intermingling of business people and bureaucrats where, upon retirement, business personalities entered the bureaucracy or served in government advisory committees and the bureaucrats entered into business or joined business associations.

It is the same firms that previously received support that later demanded limited government's role in their affairs when further government intervention was considered detrimental to firm growth. The firms then started calling for economic liberalisation in order for them to join the world markets. Liberalisation of the car industry for example did not happen overnight, but, it took years of intense debate between the cabinet, the bureaucrats, political parties and the business before the government relaxed its grip of the car industry. Even after the 1971 economic liberalisation, the government demanded co-ownership between domestic and foreign car companies (Rhee 1994:18, 36-37).

3.5 Conclusion

At the centre of this chapter is the argument that government economic intervention is inevitable. It has been applied to support the free market system in what has been referred to as functional intervention (Lall 2004). World-wide, governments cannot avoid such kinds of intervention. Government economic intervention has also been applied for selective or intrusive intervention like the case of the East Asian

Countries, in particular Japan. This was to bring about rapid industrial growth and transformation. ANC government intervention under the BEE policy, apart from addressing the market failures resulting from years of discriminatory apartheid policies, sought also to transform the economy by promoting the rise of an entrepreneurial black business class. This was the vision of political leaders like Thabo Mbeki, as indicated in Chapter One. If South Africa wants to have a black entrepreneurial class who would benefit from equity transfer, be partners with the white and foreign-owned mining companies, or even on their own, then it is argued in this study that South Africa should go beyond functional intervention and apply selective or intrusive intervention and support its black entrepreneurs similar to what Japan did. Such measures are not to be perceived as anti-capitalist or anti free market system.

From empirical findings of this study, (Chapter Seven), blacks face various barriers and limitations of which the policy makers are aware. There is a call not only from the leaders of black-owned companies but also the white and foreign-owned companies for government to offer its support and groom black entrepreneurs. Thus, it is not enough for the government to introduce new regulations without promoting and supporting the black entrepreneurs.

The experience of affirmative action in the USA, economic empowerment in Malaysia and indigenisation in Nigeria makes it clear that the success of economic empowerment measures depended on support from the political leadership, the establishment of enforcement institutions and putting in place supporting mechanisms for the intended beneficiaries. In the case of the USA, it was through presidential decrees that affirmative action was pushed forward. Strong political leadership and the establishment of institutions were crucial also in Malaysia enabling it to accelerate the empowerment drive. Although not related to economic empowerment, in Japan, it is government leadership that took the long term view of its intervention drive and supported and cooperated with business.

There is an indication from the cases above of a tendency to resist government economic intervention that is aimed at correcting or minimising the impact of past injustices or discrimination. This was clearly demonstrated in the USA, where intervention was portrayed as anti-capitalist. Critics, like Sowell (2004), proposed that blacks in the USA should be left to survive through price mechanism. This is despite white businesses having benefited from racial inequities and subverting the implementation of affirmative action. Likewise, in Nigeria, foreign-owned companies used all kind of tricks to avoid complying with the indigenisation decrees. The creation of institutions was critical for enforcement of policies and for creating support mechanisms. These were critical in the USA, where the Office of Minorities Business Enterprises and the Equal Employment Opportunity Commission were important in enforcing the policies, providing preferential support mechanisms. In Malaysia, a number of state institutions were established to support the Bumiputeras in terms of skills and business and managerial expertise. The case of Nigeria is also instructive as both the Expatriate Quota Allocation Board and the Nigeria Enterprises Promotion Commission lacked both the power and capacity to enforce the policies. The creation of enforcement institutions was thus critical in the implementation of economic empowerment in these countries.

This has been different in the BEE implementation process. South Africa has decided to depend on the private companies to assess compliance (see section 1.4, Chapter One). The government has finally established Black Economic Empowerment Commission to monitor compliance. The commission only became operational in 2015-11 year after the BEE policies came into force. So far, the implementation is driven by the white and foreign-owned companies. As a result it is these companies that are at liberty to choose how and where to implement equity transfers, as we see in Chapter Five of this thesis. It was argued in Chapter One that it is not enough for the government of South Africa to remove apartheid policies and introduce regulations and expect blacks to succeed. Unless the government changes the manner in which it has chosen to implement its BEE policy and offer blacks support, success will be very limited or it will remain window dressing.

All the governments discussed above used their financial control to ensure compliance and offer support to beneficiaries. In the USA, it was the contractors' dependence on government contracts that became crucial in the enforcement of the policy set aside. In Malaysia, the government created special banks and financial institutions to offer loans to Bumiputeras and special institutions to buy and warehouse shareholding until the Bumiputeras were ready to participate in buying them. In Nigeria, the government did not only create new banks but also acquired shares in all existing banks. It is this that made it possible for the government to enforce provision of loans to indigenous citizens. The control of financial institutions was also the backbone of Japan's success. It is this that enabled the government to apply the carrot and stick policies to enforce compliance with government's overall plans. To have a long lasting effect, Japan had centralized planning and collaboration between the political leaders and the business people.

The lack of funding has been identified by analysts on BEE in South Africa as the main constraint to black economic empowerment as blacks lacked own capital (Southall 2006, 2007; Cargill 2010). In fact the White Paper on Mining in 1998 (see Section 2.4) had proposed that the IDC and DBSA (as government financial institutions) should finance new and existing mining ventures owned by blacks. The BEE Commission in 2001 called for the creation of the National Empowerment Funding Agency (NEPFA) to drive the BEE strategy to finance black entrepreneurs. In its earlier suggestion the commission had also called for the allocation of 50 per cent of borrowed funds from the IDC to be allocated to blacks (see Section 2.5). The limited funding from the government and its financial institutions has forced blacks to be totally dependent on the largesse of white and foreign-owned mining companies. This has limited the pace of black economic empowerment in the mining sector that is capital intensive. Cargill (2010:6-7) thus calls upon the government to mobilize extra funding for BEE funding.

Policies to deal with economic imbalances need to have a long term view. In the case of Malaysia, economic empowerment formed part of a broader national economic plan to transform the economy in many aspects including language and education

policies. Policies that seek to restructure the economy have to have a long-term vision. In the case of Japan, transformation was a result of elaborate national development goals and part of national planning. The elaboration of the BEE policy in South Africa has not only been piece meal, with the DME dealing with the mining sector and the DTI with the rest of the economy and has not been integrated into the broader national development goals. It thus looks like an appendage or stand-alone policy with little linkage to other broad long-term national goals. BEE does not feature much in the National Development Plan and in Accelerated and Shared Growth for South Africa (AsgiSA).⁴¹ Also, the cooperation between the government and business is minimal. As we have seen from Chapter Two, the cooperation with the business community was strong at the BEE policy formulation process stage. By contrast, in the implementation stage, the black entrepreneurs are left to fend for themselves under the forces of the free market mechanism. The government in South Africa must learn how to cooperate with the business community and offer support to black entrepreneurs until they can stand on their own.

The analysis of empowerment policies in the USA, Malaysia and Nigeria has highlighted some of the negative consequences of these policies. These include fronting, cronyism, political patronage and the policies benefiting those for whom they were not intended to. Fronting was rampant in both Malaysia and Nigeria as this was used to subvert compliance. The issues of fronting in South Africa have been raised by critics (Khehla and Reddy 2006; Mbeki 2007; Gqubule 2006, Duncan 1996; Cargill 2010) and it is the critics that have been the motivation behind the amendment of the B-BBEE Act where punishable offences were introduced. Cronyism and political patronage in developing countries have been justified by Khan and Gray (2005), Booth and Mutebi (2012) and Kelsall (2013) as a form of primitive accumulation in the early stages of capitalism in developing countries.

⁴¹ AsgiSA was launched in 2006 and aims to tackle constraints that limit economic growth. These include limited government capacity, volatility of the Rand (the country's currency), infrastructure, skills shortages, uncompetitive industrial and service sector and inequality and marginalisation of blacks. Likewise the National Development Plan 2030 which is a long term government's economic strategy has not so far touched on the issues of mining finance or any support for black-owned companies. Its focus is on resolving energy crisis, job creation, education, health, fighting crime, rural development and manufacturing development (<http://www.gov.za>).

While cronyism and political patronage might be a reality, in the new South Africa, they might represent a major threat to equal opportunity for all which the ANC government prophesises.

4 Research Design and Methodology

4.1 Introduction

As indicated in Chapter One, this study is broad. It involves issues of equity ownership, control and management and has five objectives. This Chapter details the methodology followed to meet the study objectives. Objectives one and two deal with the extent to which white and foreign-owned companies have complied with the equity transfer and devolution of control and management to blacks as demanded by the MPRDA and the Mining Charter. These two objectives were met together through mixed approaches of qualitative and quantitative methods. Secondary data from various sources was used to establish the level of compliance on equity ownership, control and management by white and foreign-owned companies. This was done by exploring three variables: mining ownership (company shareholding and mining assets), mining control (board characteristics) and management (management characteristics). To meet objectives three (establish the different strategies used by white, foreign and black-owned companies to enter into BEE deals); four (what facilitates or hinders the BEE implementation process) and five (the role of government in the implementation of the B-BBEE policy), the study used qualitative method, in particular questionnaires and structured interviews to gather primary data.

The chapter starts by highlighting the main considerations made in the research process. This details the methodological choices and the use of a research assistant. Section two focuses on the selection of the sample for the study. Section three details the data collection process paying special attention to the secondary and primary data. Section four explains how both the secondary and primary data was analysed. Section five deals with the challenges encountered and how these were dealt with and end by highlighting the limitations of the current study.

4.2 The Research Process: Considerations and Methods

In trying to meet the study objectives, the following considerations were made. The first was to employ a mixed method approach; the second was to use a research assistant and third was to use a sample. These approaches will be explained separately. According to Bryman (2001), mixed methods involve a mix of qualitative and quantitative methods or even a mix of qualitative methods (Hennink et al., 2010, Denzin and Lincoln 2011). Hennink et al., (2010:8) mention four methods that are commonly used in qualitative method: observation, group discussions, document/content analysis and in-depth interviews. For the qualitative method, questionnaires and structured interviews are used. Elaboration on how these methods were used in this study follows later.

The second consideration was on using a research assistant. The kind of assistant needed is what Molony and Hammett (2007:295) refer to as researcher-research assistant as opposed to an informant (the one who is a source of information). The main reason for opting for a research assistant was that the mining industry is not a place I had worked in before; the study is not associated to any project with a government or a mining company and therefore personal connections in the industry are limited. Experience from conducting a study in the South African environment⁴² taught me that while South Africans are not averse to foreign nationals per se, they do not easily open up to them unless they know them or are introduced by people that they know. They also appreciate a greeting in their local languages and take it as a sign of respect. My little understanding of Tswana (learnt in my ten years stay in Botswana) enabled me to understand Sotho and Zulu and little knowledge of Afrikaans language acquired during my Masters' at the University of Stellenbosch enabled me to cope with greetings. Greetings in local languages are important to open up for conversations but not to get into peoples' circles. It was important therefore to get a research assistant, who is a South African citizen, could talk both Afrikaans and other local languages, has a good personality, higher academic

⁴² The title of the study is A National Study on Unemployed Science, Engineering and Technology Graduates: a Report Submitted to the Department of Science and Technology (2006). I participated in collecting data and in the writing up.

qualifications and could help me to have acquaintances in the mining industry in the hope of easing access to interviewees.

The search for an assistant started by tracing names of those involved in research on BEE policy issues while reading literature for this thesis. Clues were obtained by checking acknowledgement pages and text where a research assistant was mentioned. The names mentioned and the roles that they played in the studies that they conducted were jotted and telephone calls were made to the places that they worked. It was realised that some had moved away, some had changed jobs but few answered. I decided to contact Mr Nkosinathi Ngwenya as he met the requirements needed for the study. He worked as a research assistant at KIO a company that conducted several studies in the mining industry and some of which were contracted out by the DMR and for SAMDA (an association of junior mining companies). Upon interviewing him for a research assistant role, it was found out that he has a Master's degree in financial management and could understand issues of shareholding; he could speak many of the local languages including Afrikaans; had connections to the JSE and knew a number of executives and managers in white, foreign and black-owned companies or their secretaries and could trace them to the clubs they visit or knew a friend who knew somebody who could make contacts. By being connected to SAMDA, he was familiar with what was going around in terms of conferences and seminars related to mining and BEE policy issues. His connections proved valuable to meet more people.

Since he did not work permanently for me, we agreed on the mode of payment which was calculated based on remuneration paid to a research assistant with a master's degree qualifications working at the University of Pretoria at 2009-2010 salary scheme. The payments were to be done at the end of a particular month that he worked. A contract agreement specifying his roles and the monies to be paid was drawn up and which he signed. Later I felt guilty for making him to sign a contract because he was honest and reliable, but it was a right thing to do in order for our agreements to be more binding.

There are various roles that are expected from assistants. According to Mackenzie (2015) and Molony and Hammett (2007:293), the roles include to: locate, obtain, and summarise background literature and create bibliographies; locate informants, arrange interviews and translate; conduct interviews and observations and manage focus groups; edit and code data, enter and organise data and even act as a cultural tour guide if one is conducting a research in unfamiliar environment. Mr Ngwenya helped me to look for relevant literature, booked interviews, introduced me to relevant people, informed me about conferences related to BEE policy and mining issues that were taking place and often organised for me to participate. Often he accompanied me during interviews and he conducted two interviews, the first time I was down with flue and in the second had to attend a seminar that I secured unexpectedly. Overtime, I got used to some of the people in his circles which helped me in this study in many ways.

4.3 Study Sample

In order to obtain empirical support of this study, a third consideration that was made is to use a sample. A sample is a partial data or a subset of the whole population that is used to make generalization in a study. A study population is any group that shares a set of common characteristics or traits (Black 1999:111), such as a group of people, houses, records, legislators (Nachimias and Nachimias 1992: 171). In the context of this study, population refers to all mining companies operating in South Africa from which a sample is selected. The list of the mining companies was derived from mine directories obtained from the DME (see section 4.4.1 below). In other words, not all mining companies were studied. A purposive or judgement sampling method was used. Marshall (1996:523) explains this as a technique in which a researcher actively selects the most productive sample to answer the research question based on the researcher's practical knowledge of the research area and the available literature in order to search for evidence from the field. Saunders, Lewis and Thornhill (2003: 193) say that purposive sampling is suitable when sourcing data from multiple sources and can be guided by the criteria a researcher uses. This study used multiple sources as explained in the next section.

The sample used in this study was chosen based on four main criteria. The first criterion was to include dominant companies as these account for over 80 per cent of mining market capitalisation of mining industry. Data on these companies is easily available from their annual reports and websites and considered reliable. Other studies (see the DMR 2009b and KIO 2010) used such data. The starting point was to use the JSE companies. I had been following up the changes in market capitalisation of these companies since 2007. The JSE data was captured on 12 July 2011 where there were 56 JSE listed mining companies. Due to the fact that some of the dominant white and foreign-owned mining companies were not listed on the JSE, the following non-JSE listed companies were added to the sample: Xstrata and Total Coal- major coal and ferrochrome producers; De Beers Consolidated Mining and Petras Diamonds-main diamond producer and Richards Bay Minerals -mineral sands producer.

The second criterion was to ensure representation of all mining categories (platinum, gold, diamonds, coal, ferrous and non-ferrous minerals and mineral sands). Fortunately, most JSE companies are spread in all these mining categories with the exception of diamonds and hence the inclusion of De Beers and Petras which were major companies. The third criterion was to include junior companies. This was because most new foreign-owned companies fall in this category and are supposed to comply. Most of these are listed on the JSE. The fourth criterion was to include BEE companies (those owned by blacks), as the BEE policy is intended to benefit this group. It was therefore important to get their feedback on the BEE policy and its implementation. Ten of the BEE companies were among the 56 JSE companies mentioned earlier. Few non- JSE BEE companies which were business partners of the white and foreign-owned companies were added to the sample. These include, Mvelaphanda Resources, Sedibeng mining, Mmakau Mining, Matjoli Resources, Gubevu Platinum, BSC Resources, Shanduka Resources, Savannah Consortium, Panohalo Holdings, Ngazana Consortium and the Moepi Group. In total the sample included 72 mining companies (see Appendix 10.7) with 52 white and foreign-owned companies and 20 black owned companies. It is this sample that was used to collect data for equity shareholding, mining deals concluded between white and

foreign-owned companies, board and management compositions and to conduct interviews.

4.4 Data Collection

The data collection exercise started in 2008 with the collection of secondary data; primary data started in 2009 and ended 2012.

4.4.1 Secondary Data

Blaikie (2000: 28 and 184) and Saunders, Lewis and Thornhill (2003:190-191) describe secondary data as that generated by another researcher and may serve a different purpose than that of the current researcher. Included in these are books, government reports, census, official statistics, articles (from newspapers, journal and magazines), conference papers, and study reports (Saunders, Lewis and Thornhill 2003:190).

Secondary data was used to estimate the extent of white and foreign-owned companies' compliance with equity ownership, management and control. The first set of data was on market capitalisation of mining companies listed on the JSE as captured on the 12th of July 2011 which was used to estimate the percentage of black equity ownership. The JSE figures are reliable because companies have to comply with the country's financial regulations. Other studies have used the JSE figures to estimate black equity ownership (Empowerdex 2004, the DMR 2009b and KIO 2010). While KIO's 2010 study used 25 JSE listed mining companies which represented 85 per cent of the market capitalization of the JSE listed mining companies, this study used all the 56 JSE listed mining companies to estimate the value of equity owned by blacks.

As already stated in Chapter One, the use of JSE data to estimate equity transferred to blacks has limitations for the following reasons. (1) There are constant changes in shareholding as shares change hands. (2) Not all mining companies are listed on the JSE. (3) The value of shareholding owned by non-black shareholders (white South Africans and foreigners in the country or across the world) is not excluded in the JSE

data. It is hard to subtract such shares because it is hard to trace changes as the modern world makes it possible for anyone to buy or sell shares from a listed company anywhere in the world and anytime. (4) Different mining valuations techniques are used when concluding deals. These limitations are further explained in section 5.3.

Because of the above limitations, I decided to explore the actual mining deals concluded by white and foreign-owned companies with their black counterparts. This would help one to understand the pattern of black equity shareholding that has emerged and to find an explanation of the level of black management and control of both the JSE and non- JSE listed mining companies. To do this I had to embark on an extensive search of data. The starting point was a visit to the DTI and DME in 2008⁴³. Luckily there were a couple of my former students working at these places. These were instrumental in introducing me to relevant people. At the DTI, I was introduced to those who were dealing with BEE policy issues. I was provided with directories of all companies registered in the country including mining companies. It was not possible from the directories to distinguish between operational and non-operational companies (shelf companies). Therefore directories could not be useful for my study purposes. At the DME's Directorate of Mineral Economics I was provided with two directories. One listed all mining companies in operation (1274), (see DME: 2007e). The other titled *Operating and Developing Black Economic Empowerment Companies in the Mining Sector*, listed black-owned companies (see DME 2008b). The list of black-owned companies was updated in 2010 (see DMR 2010c). There was an assurance from those who provided data that almost all companies on the directories were active and operational. Apart from the directories, over 70 reports and documents were provided. These covered all mineral categories (platinum, gold, diamonds, coal, ferrous and non-ferrous minerals and mineral sands). Although the general directory listed 1274 mining companies, over 600 of the companies were micro and small scale companies which were difficult to trace as

⁴³ It should be noted that in 2009 the DME was split into two and functions related to minerals activities were moved to the DMR. The two are government departments mostly involved in the BEE policy formulation process, implementation and licensing. I had to rely more on the DMR.

they published no annual reports. It was decided to concentrate on major (or large scale) mining companies which published annual reports.

It is from the mine directories that a sample used in the study were drawn and used to collect data on three variables: mining ownership (company shareholding and mining assets), mining control (board characteristics) and the management (management characteristics). Data analysis on these variables is elaborated in section 4.5 below. The data kept on growing and updated in the course of the study. In total over 100 mining companies were explored for ownership variables, data for 468 board members and 226 of members of top management was collect.

To update and improve data, other sources were used. These include: annual reports of the mining companies; Research Channel Africa (<http://www.researchchannel.co.za>); Investec (<http://www.investec.co.za>); Empowerdex (<http://www.empowerdex.co.za>); Ernest and Young (<http://www.ernestyoung.co.za>); government departments (<http://www.gov.za/issues>); KPGM (www.kmpg.com.za); Financial mail (<http://www.thepaperboy.com/newspaper.cfm>); Johannesburg Stock Exchange (<http://www.JSE.co.za>); and the Business Map (that was involved in helping companies enter into BEE deals) which when it closed down its activities, its data was kept at Wits University) and published journal articles.

4.4.2 Primary Data

The empirical work for this study was carried out by collecting primary data. Primary data is defined by Sarantakos (1998:139-164) as that which is collected by a researcher for the purpose of a research being done. Primary data provides a researcher with control on its production and use. As indicated earlier, the collection of primary data for this study involved the use of qualitative method and in particular a survey. Phellas, Bloch and Seale (2011) mentioned three methods of survey: observations, questionnaires and interviews. This study was limited to questionnaires

and structured interviews (formal and informal interviews). Below I start with questionnaires.

4.4.2.1 Questionnaire Approach

Questionnaires were used to seek information from the management of the DBSA, IDC and NEF, the three public financial institutions as it involved only few questions. This was to get data on the BEE deals that they funded and to identify any problems with regards to funding of BEE deals in the mining industry. Phellas, Bloch and Seale (2011:184-185) say questionnaires are suitable when there are few and structured questions and respondents need more time to find data which cannot be immediately available. Although Saunders, Lewis and Thornhill (2003:280-281) state that questionnaires are considered less costly to administer compared to interviews. The research did not benefit from any cost-cutting advantages of posting the questionnaires, as they had to be handed to the respondents, due to frequent post office strikes at the time of the study. In all cases, the answers to the questionnaire had to be fetched later, as some questions needed compiling data from financial records. However it took over six months of waiting and constant phone calls and being referred from one person to another. At the end, interview appointments had to be booked in the hope that face to face contacts might help to obtain the required data. There was however very little data provided.

4.4.2.2 The Interview and its Process

The study used both formal and informal interviews to collect primary data. Interviews according to Fontana and Frey (1994) involve verbal interchange (of words) between the interviewer (a researcher) with an interviewee, (or also referred to as informant or respondent) with the purposes of understanding the latter's experiences and perspectives. In both formal and informal settings, I revealed myself openly as a researcher, told people where I worked and even gave them my business cards. As indicated earlier, interviews with a number of people were made during the study period. Throughout, the respondents were asked to comment on issues that fell

in broad areas of research. Insights were established, while frustrations and stumbling blocks experienced by those in BEE deals were noted.

Interviews were conducted with Chief Executive Officers (CEOs), Chief Operating Officers (COOs) and Managing Directors (MDs) of mining companies operating in South Africa, government officials (namely the DMR and DTI), officials of financial institutions, members of academia and civil society groups. In cases where the executive of mining companies were residing outside South Africa, those in charge of the South African operations were contacted. These officers were selected purposively for their knowledge about their organisations, as their experiences were expected to provide accurate account of policy implementation in their companies. By nature of their activities, these are elites. Elites are defined by Cicyota and Harrison (2006:133) and Welch et.al, 2002:612-613) as a group in society considered to be superior because of their power, talent and privileges. The elites include top echelons of firm or organisation executives, directors, top and middle managers and top government officials. In the business community, the elites include representatives of corporate headquarters, management in subsidiary companies and industry associations. Elites are considered important sources of firm level-information and can function as key informants to a research. Interviewing elites poses various challenges; these are explained in section 4.6 below.

Informal interviews happened in various conferences, symposiums and seminars⁴⁴ that were attended or just by being introduced to someone in the circles of people that I came to know along the way. These include: blacks who own mining companies or aspiring to get into the industry; leaders of mining associations (namely SAMDA), SAWIMA and other researchers. informal interviews were conducted with the following were made: Prof Brian Katoor, who has written extensively on the South Africa's conglomerates structure (see Katoor 1998), Mr

⁴⁴ The most fruitful ones were the Mining for Change Conference- in September 2010 held in Sandton, Johannesburg and the Impact of Global Financial and Economic Crisis on South Africa: Where Do We Stand and Where from Here? In November 2011 organised by the Limpopo Provincial Treasury. Numerous seminars were also attended at the Mapungubwe Institute for Strategic Reflection (MISTRA) and the Mining Resilience Research Institute (MRRI) of the University of Pretoria for more insights.

Clive Knoke, a lecturer in the Department of Mine Engineering at the University of Pretoria, Mr Musa Budeda, a PHD student in the Department of Mine Engineering at the University of Pretoria, Mr A. Magomezulu of the Department of Mining and Energy (this was before the division of the department into two – the Department of Energy and the Department of Mineral Resources) and other officials who wanted to remain anonymous.

Structured interviews were used for formal interviews. This interview method uses questions with the same wording and sequence for every respondent but the respondents are at liberty to add their own definitions and other explanations (Sarantakos 1998: 139-164; Nachimias and Nachimias 1992: 224-225). Sarantakos (1998: 139-164) say that structured interviews provide flexibility and offer a researcher a better chance of obtaining valid and reliable data relevant to the research objectives. Three sets of interview questions were prepared: first, for the government officials at the DMR (Appendix 10.4), second for the executives of white and foreign-owned mining companies (Appendix 10.5), and third for executives of black-owned mining companies (Appendix 10.6).

The formal interviews started in mid-2010 and continued up to the beginning of 2012. Interviews with top executives of mining companies were conducted first and then interviews with officials at the DMR followed. This was to use feedback that received from the mining companies to get responses from the government officials. Interview appointments were made quite in advance to ensure availability of respondents. I expected that I could secure an interview appointment in a month or two, however many of these appointments had to be rescheduled over and over again and some never materialised. This challenge is elaborated upon in section 4.6.

Interviews were administered face-to-face. This approach creates an opportunity for interviewer to elaborate further on complex questions and be able to pick up non-verbal clues which help to judge the relevance of the questions and change the course if necessary (Phellas, Bloch and Seale 2011:182). Face to face interviews also offer an interviewer an opportunity to control the context and the order in which questions

are asked and to probe for detailed answers (Legard R., Keegan K and Ward K. 2003).

The interviews were conducted in English language but kick-started the interview by greeting my interviewees in their local languages. Participation in the research was done on an entirely voluntary basis and anonymity and confidentiality of individual respondents were respected. This was necessary as BEE issues have become sensitive with political connotations. Nachimias and Nachimias (1992:86) explain anonymity as a case where a respondent (interviewee) does not want to be identified in a research report, while confidentiality refers to cases where a respondent does not want to be revealed as a source of data. Adhering to confidentiality and anonymity is necessary for a researcher to receive consent from those who volunteer to give data. This can be done by concealing or changing the names, gender, occupation, or position of respondents, using pseudonyms and excluding visual materials from research reports (Patton 2002; Thompson and Perry 2004). Concealing identity of respondents prevents those who read the published research product to associate the respondent as the source of the data. Not identifying respondents is necessary in order to avoid the ramifications to the respondent once the published work is presented to audiences that the respondent has associations with as indicated by Crow and Wiles (2008).

To elicit consent from the interviewees, each respondent had to sign a consent form before any formal interview. The motives of the research were also explained. Respondents were given a choice on whether or not to be recorded or to have their names revealed. They were given an option to stop the interview at any stage or even decline any questions they felt uncomfortable to answer. In writing up this thesis, the term 'respondent', was used to conceal the names of the interviewees who wanted to remain anonymous. Few anonymity and confidentiality challenges in the course of the interview were encountered (see section 4.6).

While the initial lists of interviewee were drawn prior to the fieldwork process, in the course of interviews, other people from whom to elicit the required data were drawn

to the interviewer's attention and were also interviewed. Drawing more respondents beyond those in the sample resembles what Babbie and Mouton (1998:167) and Penrod et al., (2003) refer to as snowballing. This is a process by which in the course of collecting data, located respondents suggest other people to be interviewed. In this study there were few cases that a respondent referred me to another to answer certain questions. The main reason was that not all questions in the interview schedule could be answered by the same person. For example issues about finance were referred to other people in the same company or in companies that perform such functions. In total 35 executives from 27 companies were interviewed (16 executives from 13 white and foreign-owned companies and 19 executives from 14 black-owned companies). It is the responses from these executives that form the basis for chapter seven that focuses on objectives three, four and five. The list of those interviewed and the dates are indicated in Appendix 10.7.

4.5 Data Analysis

There are two main groups of data that are analysed in the study – secondary and primary data. The secondary data is further explained into three sub-groups. The first sub-group is on JSE market capitalisation which was already obtained in an excel spread sheet. This was analysed into histograms (see figure 1.2 and 1.3 in chapter five). The second sub-group is on BEE deals concluded by individual white and foreign-owned companies with their black counterparts. This data was recorded into excel spread sheets. Under each mine category, (platinum, gold, diamonds, coal and mineral sand). As indicated earlier, three main variables were identified: mining ownership (company shareholding and mining assets), mining control (board characteristics) and management (management characteristics) variables. The first excel spread sheet recorded ownership variables: name of a company, contact details, physical location mine ventures, race (white or foreign-owned), subsidiary, name of mine venture and projects), activities (extraction, processing, marketing) and shareholding (white, foreign and black). Other ownership variables are: nature and type of companies (business partners, individual company, consortium, community trust, ESOP or women and women groups), where shares were exchanged (main

company level, subsidiary, mine venture or mine project). The second excel spread sheet recoded mining control variables. These include: percentage of shareholding; board characteristics (nationality, race, size, gender) and board composition (executive or non-executive); voting rights (preferred shares, common shares, none or low voting shares) and conditions of sales (lock-in clauses). The third excel spread sheet recorded data on management variable. The variable includes management characteristics (nationality, race, size, gender). These variables were captured in a similar manner as those of mine control.

The analysis helped to reveal more about BEE equity ownership transfer, identify which white and foreign-owned companies have transferred shares to blacks, in what mine ventures or projects, the type of deals concluded and the BEE beneficiaries. This information was used to classify mining companies into black enterprises, black-empowered enterprises, black woman enterprises or community or broad-based enterprises. It was also possible to get details on black representation on the boards and top management of mining companies as a means of explaining black control. This is rich and a more detailed analysis which provide a meaningful account of the extent of equity ownership transferred and control and management attained by blacks than estimations done by using market capitalisation of mining companies listed in the JSE. This data is used in Chapters Five and Six. No other study known on South Africa's BEE policy has provided such details.

The second group of data is the primary data that was obtained from interviews. The interviews were initially written manually in a notebook and typed immediately after the interviews. The second stage was thematic analysis. Braun and Clarke (2006:6-10) explain thematic analysis as a "method for identifying, analysing, and reporting patterns (themes) within data." It involves the building of the data into related sub-categories which helps to answer particular study objectives. It helps one to be well familiar with the data and ease the writing process (Hardy and Bryman 2004).

A deductive (top-down approach) was used for thematic analysis. The deductive approach is guided by a researcher's pre-determined categories depending on his or

her theoretical or analytical variables of the study (Saunders, Lewis and Thornhill 2003:378-381). The deductive approach is different from inductive approach (bottom-up approach) that uses themes that are not pre-determined and are derived from collected data. The themes used are related to the interview questions. The questions are guided by the literature and study objectives. These are:

1. Licensing. Licensing was critical for white and foreign companies as they had to convert their old-order rights to the new-order rights as mandated by the MPRDA (2002). They were given five years (until 2009) to complete the conversion. Failure to do so meant that their old-order rights would revert to the state. For BEE companies, licensing was to act as a point of entry into the mining sector and the MPRDA indicated that they should get preference in the issuing of new licenses. The DMR on its part was expected to use licensing as a tool in the implementation process. It was crucial to know how the licensing process was used to transform the mining industry.
2. BEE compliance. White and foreign owned companies were required to transfer equity to blacks. The Mining Charter and the Amended Mining Charter set specific compliance targets. Black equity ownership was set at 15 per cent black equity ownership in 2009 and 26 per cent by 2014. Management and control targets were set at 40 per cent black representation on the board of directors and senior management of white and foreign-owned companies even if blacks do not hold shares in such companies. It was important to find out from the mining companies themselves if these targets had been met and which problems had been encountered in the process.
3. BEE partnerships. White and foreign-owned companies were required to take on blacks as business partners. This is a central entry point for blacks to participate in extractive activity. It was necessary for the study to identify how the partnerships were forged and which problems had been encountered.
4. BEE funding. One crucial element that emerged from the literature on BEE in South Africa was blacks' lack of own funding to buy shares from white and foreign- owned companies and to operate own companies (Cargill 2010;

Southhall 2007). It was important to find out how the funding problem manifested itself and how it was being resolved.

5. The role of the government. The B-BBEE policy was an outcome of deliberate government efforts to intervene in its economy. The implementation of the Mining Charter was expected to take place under the free market forces. This implies that the government had or was expected to have no specific roles in the implementation process. It was important to find out what expectations the mining companies had on the roles of the government in the implementation process.
6. The Future of BEE. The Mining Charter is silent on what happens after 2014 (revised date 2015) when 26 per cent target of equity ownership transferred to black people was expected to have been met. From the literature, most BEE transactions were concluded with this date in mind, although in some, mining transactions have used the 'lock-in clauses' that goes beyond the 2014 cut-off date. It was therefore important to raise the issue of what is likely to happen after 2014.

4.6 Research Limitation and Challenges

This study is limited to three aspects of B-BBEE policy; equity ownership, management and control in the mining industry. The Mining Charter, the Score Card for the Mining Charter and the Generic Scorecard cover other elements including affirmative employment, skills development; enterprise development and preferential procurement (see Appendices 10.1, 10.2 and 10.3). These elements are not covered by this study. The second limitation is that the estimates of equity compliance by the white and foreign-owned companies are limited to the market capitalisation of mining companies listed on the JSE with a cut-off date of 12 July 2011. The study is not a total representation of equity ownership held by blacks in all mining companies in the country. A further limitation is that the analysis of BEE deals concluded by individual mining companies (Chapter Five) and board and management representation (Chapter Six) are based on company reports and other sources used as indicated earlier in this chapter. The interviews analysis (Chapter Seven) is based on those who responded. The study findings, therefore, do not offer a comprehensive

assessment of the extent of equity and control transferred to blacks under the B-BBEE policy. Instead, these results offer a general understanding of the extent of equity ownership transferred to blacks and black control and management of mining companies.

The interview process was not free from challenges. The first is in line with the general expectation from elite interviews. Collecting data from elites poses various challenges including gaining access, managing the power asymmetry between interviewer and interviewee, assessing the openness of elites and providing feedback. The manner in which these became challenges is expanded here.

Welch et al., (2002:612-613) state that gaining access to elites poses difficulties due to their busy schedules. Based on the study that they conducted on business elites said that in some cases it took up to two years of constant phoning and rescheduling meetings and networking to interview two executives in major manufacturing companies. They advise researchers to build social networks. These are connections through professional organisation, ties legitimized through previous personal connections and referrals from executive's colleagues and influential sponsors if one works with a project within an institution or a firm (Welch et al., 2002:614). This study encountered similar problems where some appointments were rescheduled over and over again and others never materialised and in some cases those at the top referred me to their deputies. Mr Ngwenya, this researcher's assistant, was very instrumental in securing most of the appointments as he knew people in the mining industry. Cycyota and Harrison (2006:138) say that reaching executives to respond about themselves and their firms requires such ties rather than a researcher doing this unaided or in his or her own unsolicited contacts and mailing to organisations.

Power asymmetry was experienced and, at certain times, I felt being patronised. Power asymmetry occurs when the elite respondents, who are experts in their fields, tend to dominate the interview and the researcher (or interviewer), leading to a feeling of being "patronised" on his/her part and of a 'hostage syndrome.' These are manifested by an interviewer suspending his or her judgement in the face of elite's

demonstration of power. If the interview is conducted in the interviewee/informant's own territory, there is also a danger for an interviewer to be put into the position of a 'supplicant' as he or she may feel so humble to obtain an interview space that he or she may refrain from asking critical questions (Welch et al., 2002:612-613). Power asymmetry occurred a few times, when executives being experts in their own field used jargons to explain issues of funding, shareholding structure and mineral extraction. What led to a breakthrough were the pre-interview preparations made in the form of reading about such issues and asking experts like mine engineers. I felt patronised when some black-owned companies (names withheld) used the interview to pour out their grievances about lack of government support and other problems they face as if expecting the interviewer to rush to the relevant government departments and report on their behalf. In such situations their grievances were patiently noted down and the conversation jolted back to the interview questions. When questions about low compliance were posed to white and foreign-owned company respondents, few of them became defensive. Feeling supplicant, it was better to refrain from further probing in order to get answers for other questions in the interview schedule.

There was limited openness as some respondents could not reveal certain data claiming that they were bounded by company policies. For example, financial companies that I approached (NEF, IDC and DBSA) could not reveal data on the value of funds offered to BEE companies on the grounds that they have to protect their client's interest. Few BEE companies held information about company debts claiming that it was for strategic reasons. Obtaining such information could have shed more light on BEE funding support offered by state financial institutions. This is again in line with what Welch et al., (2002:612-615) said that although elites are regarded as experts in their own field, a problem of assessing the openness of elites may occur as they are bound by organisational policies not to reveal more information than that in the press statements or annual reports. This makes the researcher getting nothing or little from the interviewee.

The second challenge was related to delays. At the DME/DMR, a number of things changed over time. In 2009, the ministerial structure was split into two; - issues on minerals fell under DMR and that of energy to a completely new Department of Energy. It took up to mid-2010 before the DMR moved and settled to its new offices and accepted visitors. This time coincided with growing criticisms about the DMR's mishandling of the conversions of old-order rights to new-order rights and the award of new licences. There was a six months moratorium placed on the issuing of any mining licences in order to give time to the DMR to sort out its internal problems (Pretoria News 27/8/2010). There were pending court cases challenging the DMR's license awards. The Department became defensive at this period and it was consequently a very sensitive time for carrying out interviews. Officials at the DMR did not easily accept to be interviewed. One interview was booked at the end of 2009 in order to obtain some clarifications on certain policy clauses, but it was only at the end of 2012 that an interview was secured. By the time, one director that was initially earmarked for interview had moved out, and that meant interviewing a completely new director.

Other delays were made worse by what Saunders, Lewis and Thornhill (2003:121) refers to as gate keepers and brokers. These include secretaries, personal assistants and public relations officers. Some of these demanded up to date letters of reference from the institution that I study –University of Edinburgh of not more than 7 days old which was impossible because of logistics. Others gate keepers did not pass on the message to remind their bosses that the appointments were due. Mining workers' strikes also caused some delays. On two occasions, the interviews were cancelled, because the workers were on strike and it was impossible to enter the premises. One official was kind enough to fit the interview during lunch hour, far from the office premise. In another occasion the official allowed the interview to be conducted at his home. Such offers were greatly appreciated. Delays were also caused by the nature of the interview questions. Some questions in the interview schedule could not be answered by one single respondent but referred to different people. This happened at Anglo American, Richards Bay Minerals and Harmony.

4.7 Conclusion

The methods chosen to carry out this research were preferred as they offered flexibility in dealing with complexities of the study focus. The use of structured interview enabled an in-depth collection of data, while thematic analysis helped the study not to diverge from boundaries of its objectives. The research environment, in particular interviewing elites and conducting a research a less familiar industry was challenging. To overcome this challenge depended much on the ability of a researcher to get acquaintances in order to access the elites. The solution became having a versatile research assistant who is local and understands people in the mining industry who helped to access respondents and other important people in the mining industry.

Despite all the challenges, the data collection in general was an enjoyable experience that enabled me to meet many people and left a lasting memory. When I pass in South Africa's mining areas, or listen to the TV or talk to colleagues, I feel that I know better about issues of BEE policy, equity ownership and control and the challenges than before.

5 The B-BBEE and Changes in Ownership in South Africa's Mining Industry

5.1 Introduction

This chapter provides study findings to part of objective one of the study. Objective one seeks to explore the extent of equity transferred to blacks and blacks' attainment of control and management in mining companies. The analysis of control and management is covered in Chapter Six. In this chapter the concentration is on equity transfer. As government used licensing to facilitate the entry of blacks in mining, this chapter starts by looking at the licenses issued in the industry. The transfer of mining ownership to blacks is done by exploring ownership variables (company shareholding and mining assets) which were mentioned in section 4.5 of the previous chapter. The estimation transfer of mining ownership is done in two ways. First is by estimating equity transferred to blacks by using market capitalisation of JSE listed companies. This is covered in section two. But as it has been continuously argued in this thesis that exploring the actual mining deals concluded by individual white and foreign-owned companies provides a more insightful picture of how the transfer of equity has taken place and which mining assets have been transferred to blacks, who are the actual beneficiaries, the strategies used, conditions attached to the transactions and the voting rights offered. All mining categories (PGM, Gold, Diamonds, Coal, Ferrous and non-Ferrous metals) have been covered. Looking at deals concluded also explains objective three of the study (strategies used to enter into BEE deals). This is covered in section three. It was anticipated by the Mining Charter that equity transfer to blacks would lead to black-enterprises and black empowered enterprises. Section four looks at this reclassification.

5.2 Licensing as a Vehicle for Entry of Blacks in the Mining Industry

Licensing has been one of the government economic intervention tools used to enforce the entry of blacks into the mining industry under the BEE policy. The use of licensing to bring about change is common instruments for countries that have

embarked on empowerment. Licensing was used in Malaysia to enable the indigenous Malays to enter into business and in Nigeria for indigenous people to exploit business opportunities in areas that the government had reserved (Lall 1996; Uche 2011). South Africa has followed the same route. As indicated earlier, first the MPRDA tied the conversion of old-order rights to new order-rights by the white and foreign-owned companies that existed at the time and the new ones that entered the industry to the incorporation of blacks in their companies. In other words, a white or foreign-owned company would renew its licences or obtain new licences upon proving that it has a black shareholder or business partner and conferred to a black shareholder some percentage of shareholding. Second, the MPRDA called upon the Minister of Minerals to give preference to blacks in the issuing of new licences (see section 2.4.1 of this thesis). Functions of registering a company in the country fall under the jurisdictions of the DTI, but it is the DMR that approves the licenses for a company operating in the mining industry. It is involved in the conversion of old-order rights to new-order rights and approving of new licenses. Upon visiting the DMR's resource centre (2012) a data on licences⁴⁵ issued up to the end of 2012 was provided. The analysis below is based on the data provided.

However, Mr Tladi, the official who provided data on licences at the DMR's resource centre indicated that the data provided is not comprehensive due to the fact that submissions of licences take place in all the nine provinces of the country. By the time of finalising the writing of this thesis (2013), the DMR had not completed the process of collecting such data in one place. The data, therefore, is not an indicative of the changes that have taken place. Table 5.1 below shows the number and type of licences issued.

⁴⁵ For more on the application and types of these licences see the MPRDA (2002) pages 24-42.

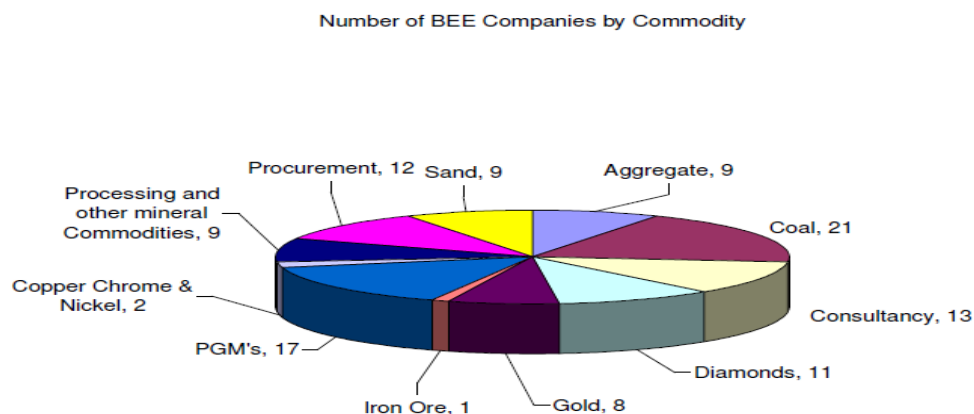
Table 5.1: Number of Different Licenses Given to Mining Companies by 2012

Classification of Compliant Companies	Mining Permits	Mining Rights	Prospecting Rights	Total
HDSA Controlled: 50% + 1	1274	650	4446	6370
HDSA Partnership 25%+1	1329	1072	2724	5125
Broad-Based Ownership:	396	305	738	1439
None	1071	829	1389	3289
Total	4070	2856	9297	16223

Source: The DMR 2013

As evident in the table above, there were, in total, 16223 licenses issued by 2012. These include: 6370 licences that were offered to black enterprises (50+1 shares) by 2012. Prospecting permits accounted for 69.8 per cent (4446 permits); mining permits 20 per cent (1274) and mining rights 10 per cent (650); black empowered entities (25+1 shares) received 5215 licenses. These are licences offered under business partnership arrangement. Again, here, the majority of licences 52 per cent (2724) are of prospecting permits, mining permits are 25 per cent (1329) and mining rights 21 per cent (1072). Worthy of noting here are permits given to broad based groups. These generally include communities, women groups, youth groups, disabled persons and other civil society organisations. They received 1439 licenses divided into 396 mining permits, 304 mining rights and 738 prospecting permits. This simply shows that some of the communities are involved in mineral activities. Although this list does not indicate the number of licenses offered to women, the Department of Finance (2011:697) indicated that between 2007 and 2010, 92 mining rights were awarded to women-led mining companies. It should be noted that mining companies normally have multiple licences depending on the activities that the company is involved in. This means there could be discrepancies between the number of companies operating and the licences offered.

An indication of the growing entry of blacks in the mining industry is further given by the BEE directories which researchers at the DMR have been compiling. The 2007 and 2010 issues that have been published by the DMR shows that BEE companies have grown from 69 in 2007 to 112 in 2010 (DME 2007 and DME 2010d). These are indicated in figure 5.1.

Figure 5.1: Number of Black-owned Companies by Commodities

Source: Created from the DME 2010d

The pie chart above indicates the uneven distribution of BEE companies' entry in the various mining categories. They are concentrated in coal (21), followed by PGMs (17). It is with the above in mind that one should look at where and how the white and foreign owned companies have complied with the MPRDA and the Mining Charter.

5.3 Estimating BEE Equity Ownership in the Mining Industry Using JSE Data

This section estimated equity ownership transferred to HDSAs (blacks) using market capitalisation. The Mining Charter explained three ways of black equity ownership in the mining industry. First, it is through acquiring majority shareholding where blacks have 50+1 share; the second is through joint ventures where blacks have 25+1 share and the third through trusts. Trusts include consortiums, communities and ESOP schemes. These are referred to as broad-based investors. Broad-based investors can own up to 100 per cent equity without being involved in management (see section 2 of the Mining Charter). The value of equity ownership transferred to blacks is considered in terms of attributable units of South African production controlled by blacks. The aim of the Mining Charter was to transfer 15 per cent equity by 2009, reaching 26 per cent by 2014. These targets applied to the industry as a whole (the value of mining assets owned by all mining companies operating in the country in

aggregate) and to individual mining companies (each individual mining company separately).

As indicated in Chapter One (section 1.4), the third phase of the BEE policy involved estimating how much equity have the white and foreign-owned companies transferred to blacks and how much control and management is under blacks. In order to estimate the percentage that is owned by blacks in line with the demands of the Mining Charter, studies have used data on market capitalisation of mining companies listed on the JSE (Empowerdex 2004, 2009; DMR 2009c; KIO 2010). Market capitalisation (also referred to simply as market cap) is a total value of the firm's outstanding shares multiplied by the market price at a time of closing business on a particular day.⁴⁶ In 2004 and again in 2009, Empowerdex, a company which evaluates and has been giving reports on compliance levels, made a summary of the value of BEE transactions in the mining industry. In its 2009 study, it revealed that between 2004 and 2008⁴⁷, there were a total of 115 reported BEE transactions valued at around R102 billion (£6.8 billion).⁴⁸ These transactions were divided into three categories. The first category involved BEE entities acquiring equity stakes in white and foreign-owned mining companies. Such transactions accounted for 70 per cent of all the transactions. The second category involved joint ventures between black-owned companies and white and foreign-owned companies, these represented 11.3 per cent of all the transactions. In the last category were the BEE companies that sold their equity stake or mining assets, due to debts either to other BEE companies or to their white and foreign partners (Empowerdex 2009:3). BEE transactions were concentrated within five HDSA controlled companies (Royal Bafokeng, Mvela Resources, Exxaro, Incwala Resources, ARM and Pamodzi) which all accounted for more than half of the value of all the transactions (R59billion or £3.9billion). Some of Pamodzi's assets were liquidated due to excessive debts. Two mining companies (Anglo Platinum and Impala Platinum) accounted for almost half of all the transactions (R47billion or £3.1billion). The transactions were concentrated in three

⁴⁶ For example, if a company like ARM has 1bn outstanding shares and the price of each share is R10. The market cap then will be R10 billion.

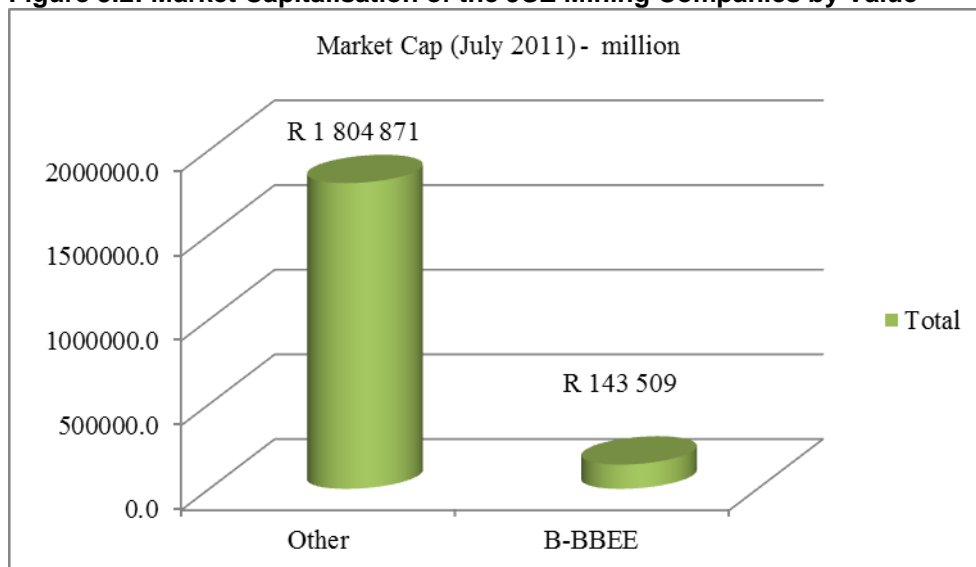
⁴⁷ Empowerdex indicates that it used only media reports of the transactions.

⁴⁸ This is equivalent to 19 per cent of all the BEE deals concluded by the JSE listed companies during the same period according to Empowerdex.

mining categories: platinum, which accounted for 33 transactions valued at R53.9 billion (£ 3.5billion); coal with 26 transactions at the value of R26.5billion (£1.7billion) and; gold where there were 18 transactions to the tune of R11.2billion (£733million).

The DMR, in its Impact Assessment Report in 2009 and using market capitalisation of the JSE listed mining companies, indicated that BEE ownership in the mining industry had, at best, reached 9 per cent by 2009 and not the anticipated 15 per cent (DMR 2009b:17). The value of the assets in the South Africa's mining industry had grown tremendously from R760billion (£69billion) at the time of the adoption of the Mining Charter in 2002, to around R2trillion (£181billion) in 2009 as indicated in Chapter One (see section 1.4). KIO's study (2010) also used the market capitalisation measure based on the top 25 JSE mining companies (of 2009) to estimate equity shareholding owned by blacks. The top 25 companies represented 85 per cent of market capitalisation of the JSE whose value stood at R1.8trillion (£163billion). KIO's study findings indicated that BEE equity ownership of black-owned companies stood at R97billion (£8.8billion) which was equivalent to 5.27 per cent.

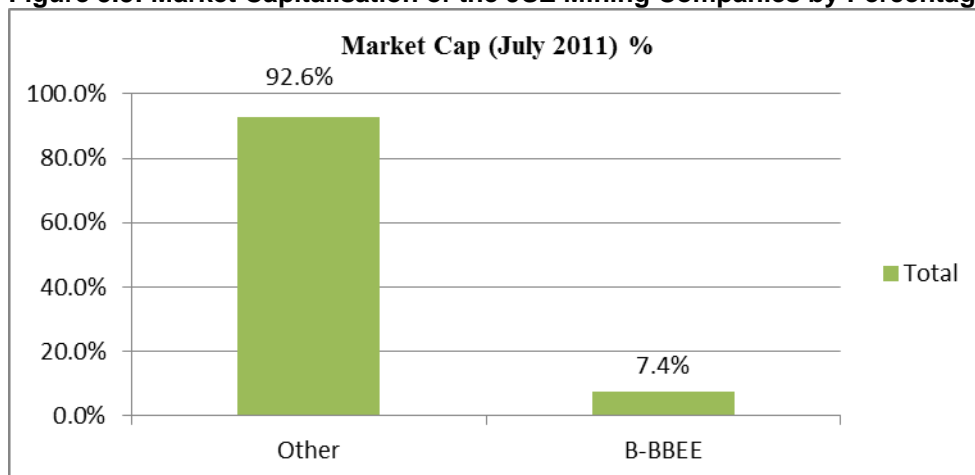
As indicated in Chapter Four, this study also used market capitalisation data for the entire JSE listed mining companies. There were 56 as per 12 July 2011 with the value not much differing from the 25 companies that KIO used and stood at R1.8trillion (£163billion) at the time, (see Appendix 10.8). The analysis of these 56 JSE companies is indicated in Figure 5.2.

Figure 5.2: Market Capitalisation of the JSE Mining Companies by Value

Source: the JSE 2011

Black-owned companies (or also known as HDSAs) accounted for roughly R143billion (£13billion) or only 7.4 per cent. This is a far cry from the 15 and 26 per cent that the Charter anticipated. Among the 56 JSE listed mining companies, ten were BEE companies (in which blacks had 50+1 per cent votes).⁴⁹ Some of these companies (Wesizwe and Northam) have lost their BEE status as we will see later in Chapter Five. BEE ownership of the JSE listed mining companies is very small in terms of percentages as indicated in Figure 5.3.

⁴⁹ These include Exxaro Resources, African Rainbow Minerals, Northam Platinum, Royal Bafokeng Platinum, Merafe Resources, Optimum Coal Holdings, Wesizwe Platinum, Anoorag Resources and Sephaku Holdings.

Figure 5.3: Market Capitalisation of the JSE Mining Companies by Percentage

Source: the JSE 2011

Two companies dominated equity that HDSAs own on the JSE. These were Exxaro Resources and Africa Rainbow Minerals which, together, account for 72.5 per cent or R104 billion (£9.4billion). Another 10 per cent was under the control of the Royal Bafokeng Nation, namely the Royal Bafokeng Platinum, Merafe Resources and South African Coal Holdings. In other words, shareholding controlled by HDSAs is highly concentrated.

The estimation on equity owned by HDSAs indicated above is in stark contrast to those by the Chamber of Mines (2010) that indicated that its members had already achieved 15 per cent target. An attempt was made to investigate why there were different compliance levels and found out several reasons. The first is associated with lack of clarity on the term BEE equity ownership. In its calculations, in the 2009 report, the DMR indicated that it used economic interest to estimate equity transferred and voting rights to explain black control as required by the Mining Charter (DMR 2009c:22-.24). Later the DMR introduced the idea of net value, that is, shares that are fully paid for (also referred to as debt free shares). It is the different methods used (either net value or economic value) that causes the differences in the estimations of the equity transferred to HDSAs. The Chamber of Mines disagrees to use the net value and interprets BEE equity ownership under HDSAs only in terms of economic interest, that is, equity transferred to BEE companies regardless of their indebtedness (Chamber of Mines:2010).

The question whether equity calculations should include net value or not is the issue that has not yet been cleared even in the amended Mining Charter (section 2.6.1) and beyond this thesis's control. As indicated in Chapter One (section 1.4), blacks lack own funds and BEE deals depended on debt financing. The payment of the debts or redeeming of shares depended on dividends paid. This implies for HDSAs to become debt-free depends much on the growth of a company and dividends paid. The problem that may arise is that, it may take time for a new HDSA- owned company (or any other new mining company) to realise returns. This study gives an example of Kgalagadi Manganese, a company that was established in 2005, is expects to reap returns in 2018, 13 years since the acquiring acquisition of the mining license. It is questionable that black-owned companies will be debt free.

The second reason for differences in estimating equity shareholding under black control stems from complications made by the “continuing consequences principle” allowed in the Mining Charter (see section 4.7). In cases where BEE companies sold their shares or were liquidated (e.g., during the financial crisis in the late 1990s), the white and foreign-owned companies that had transferred equity to blacks kept their compliance points.⁵⁰ The Chamber of Mines recognises such deals but the DMR requires those companies which lost BEE partners to take new ones to compensate for the loss.

The third reason for differences is associated to different mining valuations techniques used when concluding deals. According to Mr Clive Knobe, a lecturer at Department of Mining Engineering at the University of Pretoria, who previously was a mine director at Rand Mines whom I had inform interviews several times, mineral assets are sometimes valued using the mine's expected life span and sometimes anticipated mineral quantities in the soil mixed with other measures.

⁵⁰ Big companies like Anglo American had transferred large amounts of shares before the Mining Charter came into effect. Anglo American was allowed to convert its old order licences to new order licences under the Continuing Consequences principle. Thus when Anglo Gold Ashanti was established, it retained compliance points based on deals concluded by Anglo American.

The fourth is related to limitations of using JSE data. There are various issues here. The first is that the value of market capitalisation of black-owned companies listed on JSE does not exclude the value of shareholding that is owned by white South Africans and foreigners in such companies. It would have been right to subtract the value of such shareholding in order to get what KIO (2010) calls the effective value of black ownership. This would be a difficult excise taking in mind that people buy or sell shares anytime and anywhere using online facilities. The second is that, what a company owns might constantly change in value as shares change hands and company share values change. In short there are many factors that may explain changes in the value of shares a company holds at one particular time. The changes in share value may call for a constant up-dating of data. Third, not all mining companies are listed on the JSE. The best examples of these are Shanduka, a BEE Company and Xstrata, a foreign-owned company. Both have extensive mining interests in South Africa. Using JSE data therefore omits such companies. These are problems that the government has to take into consideration when developing a better way of estimating the value of mine assets owned by blacks in the country. Unless these problems are resolved, there will be continued disputes on the actual percentage of equity transferred to blacks.

As indicated earlier it is for these reasons that the study explores mining deals that are concluded between individual white and foreign-owned companies with their black counterparts. The section below concentrates on BEE mining deals that have been concluded between white and foreign-owned companies with their black counterparts.

5.4 Inside the BEE Honey Pot: Mining Deals in the Various Mineral Commodities

This section used secondary data to investigate the mining deals that white and foreign-owned companies have concluded with their black counterparts. The section reveals percentage of shareholding transferred to blacks, mining assets that blacks benefited, strategies used to transfer the mine assets and conditions attached to transactions. The companies explored here include the 72 companies that make the

study sample. The study sample includes all the 56 JSE listed mining companies (see Appendix 8) and those companies that are not JSE listed. The discussions in this chapter are guided by the mine categorisation used by the DMR (and previously the DME). In most of its reports, the DMR categorises mineral commodities into the following: (1) Precious metals and minerals, (2) Energy Commodities, (3) Non-Ferrous Metals, (4) Ferrous Metals, (5) Industrial Metals, (6) Aggregate and Sand and (7) Processed Minerals. The precious metals and minerals embrace Platinum Group Metals (PGMs), Gold and Diamond. All three are discussed. The energy commodities category comprises coal, natural gas, crude petroleum and uranium. Only coal is considered in this study, as natural gas and petroleum are governed by the Liquid Fuels Charter. There are a small number of companies operating in the ferrous, non-ferrous and industrial metals (DMR 2009a, 2010g, 2011a). Aggregate and Sand category comprises numerous mostly micro and small scale enterprises. These are not explored in this study, because it is difficult to obtain data as most of these companies do not produce annual reports and their nature of activities involves processing minerals and manufacturing. Because of these reasons, the section is referred to as “other minerals”. What follows below is a category by category analysis of BEE deals concluded by individual white and foreign-owned companies with their black counterparts, starting with the Platinum Group Metals.

5.4.1 BEE Deals in the Platinum Group Metals (PGMs)

The PGM sector has become the most important mining sector following the fall in gold production and export (DMR 2009c). The sector is dominated by three major companies; Anglo Platinum, Impala Platinum and Lonmin. Anglo Platinum is a subsidiary of Anglo American Plc., the world largest producer of PGMs (accounted for 40 per cent of world newly mined platinum in 2009). Table 5.2 shows BEE deals that were concluded by individual white and foreign-owned companies in the PGMs, their BEE partners, percentages exchanged and the mines involved. Most of the BEE deals in the sector have been concluded by Anglo Platinum a subsidiary of Anglo American Plc. As noted in section 2.2, Anglo Platinum was formed in 1995 from the assets owned by Amplats. Amplats was part of JCI and after the unbundling of JCI; Amplats became Anglo Platinum with the name becoming formal in 2000. Anglo

Platinum is a holding company for Anglo American Plc's platinum's interests. Anglo Platinums mining extraction operations are carried out by its subsidiary, the Rustenburg Platinum Mines.⁵¹

Overtime Anglo Platinum concluded several BEE deals, the first BEE transaction was with the Royal Bafokeng Resources in 1997.⁵² This started as a 50-50 joint venture over the Royal Bafokeng Platinum Mine (RBPM), but later Royal Bafokeng held 67 and Anglo Platinum 33 per cent shareholding (Anglo Platinum 2010). Both Royal Bafokeng and Anglo Platinum created Lisinfo 23 Pty Ltd that was listed on the JSE. But Anglo Platinum took a 25 per cent interest in Lisinfo (Anglo Platinum 2011; Royal Bafokeng Holdings 2011). Anglo Platinum's second BEE transaction was with the Bakgatla Ba Kgafela Traditional Community over the Union Mine. Anglo Platinum offered 15 per cent equity to the community. The third transaction was with the African Rainbow Minerals Consortium (ARMC), a subsidiary of African Rainbow Minerals (ARM)⁵³ in which the Mapindima and Matimatjaji communities owned 17.5 per cent, in 1999. This is a 50-50 joint venture with Anglo Platinum over the Madikwa Platinum Mine. The ARM acts as a lead partner of consortiums with communities under the ARM Economic Empowerment Trust.

⁵¹ Based on the 2008 DME records, Anglo Platinum has three wholly-owned mines: Rustenburg Platinum Mines (with Frank, Townlands and Paardekraal shafts); The East Mine composed of the Turffontein, Bleskop and Brakspuit shafts and; the Waterval Mine (the Amandelbult Section and the Potgietersrust Platinums). Other wholly-owned ventures include a smelting refinery at Rustenburg that treats concentrates from its wholly-owned operations and from its joint ventures and other third parties. Its wholly-owned projects included Twickenham and Hackney farms (DMR 2010g).

⁵² Royal Bafokeng Resources is an investment arm of the Royal Bafokeng Nation which owns 1200 square kilometres of land which hosts the Bushveld Igneous Complex in the Western Limb.

⁵³ ARM is a company started by Patrice Motsepe. The main investors are: African Rainbow Minerals and Exploration Investments (Motsepe family investment company) 41.26 per cent; ARM Broad Based Economic Empowerment Trust 13.45 per cent; Black Rock Inc. 10.61 per cent; Public Investment Corporation 5.16 per cent, Fidelity Investments 4.17 per cent and Allan Grey Investment Council 3.78 per cent (ARM 2010).

Table 5.2: BEE Deals Concluded in PGMs

Company	Black-owned Companies/ Partners	Nature of Shareholding	Percentage Shareholding Transferred	Where Shareholding Exchanged
Anglo Platinum	Royal Bafokeng	Community	67	Royal Bafokeng Platinum Mine
	Bakgatla Ba Kgafela	Community	15	Union Mine
	African Rainbow Consortiums	Joint venture	50-50	Modikwa Platinum Mine
	Pelewani Investment	SPV+Consortium	51	Bokoni
	Mvelapanda Resources	HOLDCO	10.63	Booyseendal/North am Project
	Wesizwe created in 2003	HOLDCO	16.33	Frischgewaagd- leading project
Impala Platinum	Royal Bafokeng Nation	Community Trust	13.4	Company level
	ARM	Joint venture	55	Two River mines
	Marula, Makau+Thubase	Community Trust and companies	27	Marula Platinum Mine
	Inkosi Platinum	Joint venture	51	Inkosi platinum mine
Lonmin Platinum	Incwala Resources Created by Lonmin	Community Trust and consortium	18 and 26	Western and Eastern mine and Akanani project
Aquarius Platinum	Savannah Consort	Consortium	26	AQSA Company Level
	Imbani platinum	Joint venture	26	Blue Ridge mine
	Bakgage Mining	Community Trust	26	Zondermain
Eastern Platinum	Gubevu Consort	Consortium	26	Barplats Investments. Company level
Platinum Canada	Moepi Group	Community Trust	27	Boyton Investments. Company level
Platmin Australia	Corridor Mining	Limpopo Govt.+ community Trust	15	Smokey Hills Platinum

Source: Compiled from Company Annual Reports and other Company Sources

Anglo Platinum's fourth BEE transaction involved what was then known as Lebowa Platinum which was owned by Amplats but taken over by Pelewani Investments through a BEE deal. This deal receives special attention here because of its complicated nature. For this transaction, Anglo Platinum started a special purpose vehicle (SPV) in 2004 known as Pelewani Investments on which blacks acquired 51 per cent shareholding with Anglo Platinum owning 26 per cent and the IDC 23 per

cent. Pelewani Investments thus qualified as a black-owned company.⁵⁴ As a black-owned company Pelewani Investments could enter into BEE deals. To do this Pelewani Investments created the Pelewani Trust which acquired 56 per cent shares in Anoorag (a Canadian company) with the remaining 43.75 being publicly held. Pelewani Investments acquisition of 56 per cent shares in Anoorag, made Anoorag⁵⁵ qualify as a black-owned company. Then, Anoorag, through another of its fully owned company, the Plateau Resources, acquired 51 per cent of Bokoni Platinum Holdings (Bokoni Holdco). Rustenburg Platinum Mines (which is a subsidiary of Anglo Platinum) then purchased the remaining 49 per cent. Bokoni Holdco then acquired 100 per cent shares in Bokoni Platinum Mines which included the Boikgantsho, Kwanda and Ga Phasha Projects.

It is important to note the conditions attached to the Pelewani - Anoorag deal. In the deal specifications documents, it is indicated that Plateau Resources' 51 per cent shareholding in Anoorag cannot be traded until 1 January 2015, as part of a lock-in clauses allowed by the Mining Charter to prevent BEE shareholding to be diluted. Rustenburg Platinum Mines provided vendor finance facility which included a cash component and share component to the tune of R1.1billion (£100million) and an operating cash flow shortfall facility (OCSF) of R750million (£68million) (Anoorag 2011). This basically means Bokoni Mines operates on a debt financing underwritten by the Rustenburg Platinum Mines and any profits made are used to service the debt, leaving nothing for the BEE investors.

The fifth BEE transaction was with Mvelapanda Resources. The company was once jointly owned by Mvelapanda Holdings (20 per cent) and Afripalm Resources⁵⁶ (31 per cent) and minorities (49 per cent). What happened is that Mvelapanda Resources and Anglo Platinum each held 22 per cent shareholding in Northam (which in turn owned 100 per cent of Northam Mine). Anglo Platinum and Mvelapanda Resources jointly held 50 per cent each in the Booyseendal project. By swapping contingent

⁵⁴ This is referred to in the MPRDA and Mining Charter as Black Enterprise. The two terms are used interchangeably in this study.

⁵⁵ Anoorag has changed its name to Atlatsa Resources Corporation.

⁵⁶ Afripalm Resources is a black-owned consortium made of Phalali Trust (42.9 per cent), Unipalm (21.4 per cent), Oakbay Trust (21.4 per cent) and Letchme Trust (14.3 per cent).

properties and for cash consideration, Anglo Platinum relinquished its Booyssendal interests to Mvelapanda Resources. After getting Booyssendal, Mvelapanda placed the entire project under Northam to obtain a higher percentage of Northam shareholding. At the end of the transactions, Mvelapanda Resources had a 63 per cent shareholding in Northam and Anglo Platinum remained with 11 per cent shares. This automatically transformed Northam into a black-owned company, giving extra BEE ownership credits to Anglo Platinum. This indicates some of the strategies used in concluding BEE deals. In the interview conducted with Mr Lewis (CEO of Northam) for this study, he said that negotiating such transactions can take up to three years and it is not uncommon to update the terms of contracts if it is necessary.

Mvela Resources did not have enough capital to expand the Northam Mine or to exploit the Booyssendal project but could not exit from the deal. The problem laid in the deal agreement. In this deal, Mvela Resources and Afripalm Resources rights to dispose of their shares in Northam were restricted. This formed part of a lock-in agreement allowed under the Mining Charter. Selling their shares would have reduced Northam's black empowerment credentials. Likewise, the voting rights in Mvela Resources could not be changed, except in the specific instances allowed in the agreement and with the consent of the Minister of Mineral Resources.

In the interview with Sipho Mofokeng, (CEO of Mvela Resources), he indicated that the lock-in clauses in the deal agreement affected his company, as it blocked Mvela Resources decision to exit. It was only after Mvela Resources was accused of operating a pyramid that the Minister of Mineral Resources granted permission for Mvela Resources to be unbundled. The ruling was based on the fact that Mvela Resources controlled over 50 per cent of Northam and derived 75 per cent of its attributable income from Northam. This made Mvela Resources a pyramid which is unlawful in South Africa. Northam then decided to acquire the entire issued ordinary share capital of Mvela Resources through the issuing of new Northam shares to Mvela Resources ordinary shareholders. The transaction then allowed Northam to acquire a percentage of Mvela Resources' interests in Trans Hex (20.3 per cent), in the Dwaalkop (50 per cent) and Kokerboom joint ventures (51 per cent) and some

shares in Gold Fields. The final outcome, however, has been that Northam⁵⁷ ceased to be a black-owned company as Afripalm⁵⁸ and Mvela Holdings remained with 10.6 per cent and 11.5 per cent shareholding, respectively, or 22 per cent for both (Northam 2011 and Northam Circular to shareholders 2011:74).

The sixth transaction was with Wesizwe Platinum, created in 2003 and listed on the JSE in 2005. Wesizwe was controlled by the Bakubung Ba Ratheo Community. In 2007, the community had 25.7 per cent shareholding. The other shareholders were: Lincoln Ngculu (5.7), Thuthukile Sikweiya (5.7) and Vunani Capital (6.6). Wesizwe then acquired African Wide Mineral Exploration through which it gained 26 per cent of the Western Bushveld Joint Venture with Anglo Platinum. In a series of transactions, Wesizwe Platinum gained control of the Frischgewaagd-leding project which, after working out a bankable feasibility study, enabled Wesizwe to sign a new agreement with the Jinchuan Group from China in 2008.

The final outcome was that Jinchuan acquired 45 per cent shareholding in Wesizwe for US\$200,368,292, provided a debt facility for US\$650 million and provided the management of the mine now known as Bakubung Platinum Mine. A special purpose vehicle (Micawber 809) was created to house the shares that were unpaid for equivalent to US\$26,631,705. Anglo Platinum, through its Rustenburg Platinum Mines, still retained 13.01 per cent equity in Wesizwe Platinum (Wesizwe Platinum 2011). Wesizwe Platinum still owns 100 per cent shares of Africa Wide which, in turn, owns 26 per cent of Maseve, 74 per cent owned by the Platinum Group Metals. (ibid: 2011). From the interview conducted with the CEO of Wesizwe, Mr Arthur Mashiatshidi for this study, he noted that the company lost its black-ownership status as its empowerment credentials were reduced to a mere 16.33 per cent shares and also lost control of the company to the Jinchuan Group, which subsequently took

⁵⁷ The other main shareholders of Northam are: Eurasian Natural Resources (ENRNV) 13.3 per cent, Public Investment Corporation (PIC) 6.1 per cent, Sanlam 4.6 per cent and Coronation 4.1 per cent.

⁵⁸ Afripalm is controlled by Lazarus Zim who was in 2005 voted African business leader of the year. Things, however, have changed and Afripalm was forced to sell its shares in Northam to the Public Investment Company to pay its outstanding debts to Nedbank in 2012. He had to relinquish his chairmanship of the Northam Board. At the height of his career he was reported to be on the board of 47 entities

over management of the company. Wesizwe's case is a good example of how BEE (HDSA) companies are limited in terms of making strategic decisions to get out of debt if there are no other strings attached to the deal (i.e., lock in clauses). Getting out of debt means selling shares, and this naturally puts a company in danger of BEE shareholding dilution. This explains the challenge of sustaining BEE equity ownership.

Impala Platinum is the second largest PGM producer. It was formed in 1968 as Bishopsgate Platinum and changed to its current name in 1978. It has mining interest in South Africa and Zimbabwe. Its main mining interests in South Africa include the Impala Mine north of Rustenburg (with 14 shaft systems), the Marula Mine around Sekhukhuneland in Limpopo province and fully owned refining operations in Springs-Gauteng. Impala has concluded deals with black-owned companies at both the main company and mine levels. At the main company level, Impala Platinum's BEE partner is the Royal Bafokeng Resources which owns 13.4 per cent of Impala Platinum. This was expected to replace the royalty it used to pay to the Bafokeng Nation whose community owned the mineral rights and the land where Impala operates. The second BEE transaction is at a mine level involving a joint venture at its Two Rivers Mine where ARM owns 55 per cent of the joint venture. Impala Platinum's third BEE transaction is over the Marula Platinum Mine where it has three BEE partners: the Marula Community with 9 per cent shares, Makau Mining company with 9 per cent and Tubatse Platinum 9 per cent. Impala Platinum's fourth transaction is also at mine level. This is also a joint venture with Inkosi Platinum (51) (Impala Platinum 2010, 2011).

Lonmin Platinum holds a third position as a platinum producer. It is a subsidiary of Lonmin International Plc., a UK-based company that originally started as Lonhro Plc. in 1909. In the 1990s, Lonhro Africa Plc. separated from its London based mother-company, changing to its current name in 1999 after disposing off all its non-mining business assets. In 2004, Lonmin created a black-owned company known as Incwala Resources in which it retained 23.56 per cent shares with the IDC, a state financial institution having another 23.56 per cent shares. The remaining shares

(52.88 per cent) were taken up by a consortium of black companies and groups. Included in the consortium were: South African Women in Mining Investment Holdings,⁵⁹ Dema Capital, Andisa Capital, Vantage Capital, Bapo Ba Mohale Community and Lonmin Employees Trust. Incwala resources then acquired 18 per cent shares in Western and Eastern Platinum and 26 per cent shares in Akanani Platinum Project, formerly owned by Afri Ore. Lonmin paid R3.9billion (£278million) and Incwala R900mn (£64million) in 2007 for the Akanani Project. Incwala Resources, however, was not able to service its debts and members of the consortium were looking for a way out of the business deal. To maintain its BEE status, Lonmin had to find another black-owned company to take over Incwala's shares. It thus organised a takeover by Shanduka Resources⁶⁰ of the Incwala Resources BEE shares. This is a good testimony on why the few BEE companies that are well established in the field keep on getting more deals. In 2011, Lonmin provided a vendor loan to Shanduka of R2.5billion (£227million) for five years. To cover for this loan, Lonmin placed 10million shares worth 5 per cent of its current issued shares with institutional investors. This allowed Shanduka to acquire 50.3 per cent shares in Incwala (Lonmin 2011). On 16 August 2012, Lonmin was plunged into turmoil when 34 striking workers at its Marikana mine were gunned down by the police. Cyril Ramaphosa, the main shareholder of Shanduka Resources which had taken over the BEE shares in Incwala, was fingered for influencing government decision on the killing of Marikana strikers (Sunday Times 19/8/2012). He has however been cleared by the Fanlam Commission created to investigate the Marikana massacres (Bruce 2015).

It is interesting to note that from the beginning of entering South Africa's mining terrain, the new comers (the junior foreign platinum mining companies) have taken on BEE partners and offered them 26 per cent shareholding. One of these is Aquarius

⁵⁹ This is an investment arm of the South African Women in Mining Association created in 1999 with the aim of assisting companies owned and or managed by women to obtain mineral rights.

⁶⁰ Shanduka Resources is a subsidiary of Shanduka Holdings that is controlled by the Ramaphosa Family Trust. Other shareholders include Management and staff, J Motlatsi and others, Community Trusts, Litha Strategic Investments and institutional investors. Shanduka's interests in the mining sector include: 30 per cent equity in Kangra Coal, 26 per cent equity in Pan African Resources, 50.1 per cent of Shanduka Coal, 50.3 per cent of Incwala Resource and 13 per cent in Lace Diamonds (Shanduka 2012).

Platinum International that operates through its South African subsidiary -Aquarius Platinum South Africa (AQSA). It offered 26 per cent equity to a consortium of black groups known as Savannah Consortium, which is chaired by Zwelake Mankazana. It also has a joint venture with Imbani Platinum on the Blue Ridge Mine and at Zondernaim project with the Bakgage Mining Holding, a community-controlled company that owns 26 per cent (Aquarius 2010). Eastern Platinum also created a South African subsidiary, Barplats Investments and gave 26 per cent shareholding in the subsidiary to Gubevu Consortium Investment Holdings. Gubevu's lead partner is the former South African Minister of Justice, Penuel Maduna (Eastern Platinum 2010).

Platmin Ltd (Canada) operates in South Africa through its subsidiary Boyton Investmennts. Boyton's BEE partner is the Moepi group which was offered 27 per cent shares. The controlling shareholders of the Moepi group are the Bakgatla Ba Kgafela, a community shareholder (50.1 per cent), and the second is a foreign-owned consortium called Pallinghurst Investor Consortium (PIC South Africa) with a 49.9 per cent. Other of its partners are Ridgewood Investments (from Mauritius), which controls 17.6 per cent, Dutch Investments which manages 10.9 per cent, Bakgatla who possess 8.1 per cent and Investec Bank, which owns 3.7 per cent (Platmin 2010). Platmin Australia operates the Smokey Hills Platinum Mine in which it holds 80 per cent equity. The remaining equity is owned by local communities around the mine (5 per cent) and Corridor Mining, a fully owned subsidiary of the Limpopo Economic Development Enterprises (15 per cent). This is a unique shareholding where a government unit owns BEE shares. This is, however, similar to the ANC's "Chancellor House" which benefits from government contacts just like any BEE company as indicated by Cargill (2010 93-95).

Few things can be summed up from platinum mining deals that were concluded. First is the emergence of community shareholders. All white and foreign-owned platinum companies have communities as shareholders. Many communities established company trusts and have taken equity in the white and foreign-owned mining companies. This is proof that mining companies can no longer bypass communities

located around the mining sites. As indicated in chapter one by Cargill (2010), in order for these communities to benefit from their shareholding, they need to have well established and permanent administrative structures that are capable of negotiating with the mining companies and oversee the community investments. Those communities without strong administrative structures depend on what are called 'lead partners' to take care of their business interests and act as a bridge to white and foreign-owned companies. This came out strongly in the interviews conducted with the executives of BEE companies for this study and is expanded upon in Chapter Seven.

The second is that those BEE companies which benefited in the early mining deals have a better chance to grow and attract more investments and capital. An example is Shanduka. As explained above, Shanduka took over the BEE shares of Incwala Resources. The findings here conform to what the executives from white and foreign-owned companies said during the interviews. The executives prefer companies that already have deals in the sector. This may explain why the same companies are picked again and again. Critics like Khehla and Reddy (2007) and Moeketsi Mbeki (2007) in their criticisms of the implementation of policy that has created a few 'fat cats' or 'black moguls' as they call them fail to see the connection between preferences of white and foreign-owned companies for those blacks who have mining assets. It is this preference which results in the same black beneficiaries benefiting from BEE deals over and over again. The third is the danger of dilution of BEE shareholding and loss of control that BEE beneficiaries face when they cannot fully pay for their shares or are forced to sell their shareholding. As already argued, Incwala Resources, Mvela Resources and Wesizwe were forced to sell their shares in order to get out of debts and seek partners with financial muscles in order to bring projects into operation. In the process, the three companies lost or diluted their BEE shareholding. The selling of BEE shares point to the challenge of sustaining the equity targets demanded in the Mining Charter.

Fourth is how certain clauses of the policy affect BEE shareholding and its implementation. The Mining Charter's continuous consequences principle, for

example, allows white and foreign-owned companies to keep their compliance points despite having lost partners. This tends to exaggerate the actual equity owned by blacks and may explain the varied and conflicting results in the studies that sought to estimate the equity transferred to blacks. One also needs to note the lock-in clauses which, while not part of the Mining Charter, are used by the white and foreign-owned companies in their contractual arrangements to safeguard their BEE status. These make it difficult for BEE shareholders to sell their shares and get out of debts, as it can only happen with the consent of the white and foreign-owned company partners.

5.4.2 BEE Deals in Diamond

The structure of the diamond industry has changed significantly. This is an industry that the De Beers Consolidated Mines (DBCM)⁶¹ and the Anglo American Corporation⁶² had controlled for many years. In Southern Africa, the two companies controlled mining assets extending up to Namibia, the then South West Africa, and to Botswana. Diamonds are associated with the Oppenheimer family who slowly purchased De Beers's shares and joined the De Beers board of directors in 1926. By merging with its own diamond assets, the De Beers Consolidated Mines (DBCM) was formed and ultimately came to control the production and selling of diamond globally through the Central Selling Organisation. DBCM increased its control of diamond production in South Africa in 2000 when it bought from Avmin the Venetia Diamond and Finch Diamond mines. At that point, DBCM accounted for almost 90 per cent up of the country's entire diamond production. DBCM's dominance is getting diminished as a new foreign-owned diamond company, Petras Diamonds, has emerged, and continues to grow. DBCM has been disposing some of its mines in the country to Petras. Both DBCM and Petras are not listed on the JSE, despite their

⁶¹ The company was formed after Cecil Rhodes and Barnato amalgamated De Beers and Kimberley Central on 13 July 1888 in an effort to control the South Africa's diamonds industry and managed to maintain this control for over 200 years. The Oppenheimer family established Anglo American Corporation in 1917 and later Consolidated Diamond Mines (CDM) in 1920 in South West Africa (Gregory 1962).

⁶² Anglo American success was attributed to financial support from both British and American capital. The American capital was put up by J.P. Morgan and Company and Newmont Mining Company at the early stages. Mining consulting engineers played a big role in convincing funders on viable projects (see Nkosi 1987; Seidman and Seidman 1977)

substantial control of diamond assets in the country. JSE would have been an easier facility for blacks who would like to buy shares in these companies. Table 5.3 below indicates the BEE deals concluded in the diamond sector.

Table 5.3: BEE Deals Concluded in Diamond

Company	Black-owned Companies/ Partners	Nature of Shareholding	Percentage Shareholding Transferred	Where Shareholding Exchanged
DBCM	Ponahalo Investments	Consortiums, SPV, ESOP	26	Company level
Petras	Sedibeng Mining	Company	26	Kimberley Underground Mines
	Sedibeng Mining and Bokoni Properties	Company	17.65 and 7.65	Sedibeng Mine
	Sedibeng Mining	Company	26	Starting the mine
	Re Teng Diamonds	Company	30	Koffiefontein Mine
	Thembinkosi Mining Investment and ESOP	ESOP/company	14 and 12	Cullinan Mine
	Senaka Diamonds	Company	26	Finch mine
TransHex	Mvela Resources	Company	20.3	Company level
	Mvela Resources	Company	50 and 51	Dwaalkop and Kokerboom
Rockwell Diamonds	Zico and African Vanguard Resources	Company	26 each (52)	Company level

Source: Compiled from Company Annual Reports and other company Sources

DBCM's route to BEE compliance started with creating a SPV to house shareholding from a consortium known as Ponahalo Investments. Ponahalo Investments is controlled by Ponahalo Holdings which has 50 per cent equity.⁶³ The other shareholders are: The Equal Allocation Trust, an ESOP created for the benefit of current employees and identified pensioners of De Beers Group (35 per cent), and another ESOP – Key Employee Trust for the benefits of key employees of the De Beers Group (15 per cent) (The Competition Tribunal 2006). Ponahalo Investments then acquired 26 shareholding of DBCM (DBCM 2009, 2010, 2011).

⁶³ Ponahalo Holdings itself is constituted by a consortium that includes: E M Dipico, former premier of Northern Cape province (18 per cent), Peotona Capital (16 per cent), B Peterson (13 per cent), M Mashishi (8 per cent), The Women's Trust (17.5 per cent), The Disabled Persons Trust (10 per cent) and The Community Trust (17.5 per cent) (The Competition Tribunal Case No. 12/Im/Feb2006).

Petras Diamonds, founded by Adonis Pouroulis in 1997 with headquarters in Jersey UK,⁶⁴ has become one of the main foreign-owned diamond companies in the new South Africa. It acquired three fissure mines: Helam, Star and Sedibeng, from Crown Resources and other underground kimberlite pipes (Finch, Koffiefontein and Kimberley Underground) from DBCM and the Cullinan Diamonds Mine.⁶⁵ DBCM was running Koffiefontein at a loss, but Petras bought it in December 2006, for R82mn that covered rehabilitation, and hence managed to turn Koffiefontein to a profitable operation. Again in 2008, Petras organised a consortium of foreign investors and bought Cullinan Diamond Mine for R 1 billion cash (£700 million) and, in the same year, acquired from De Beers the Kimberley Underground. In 2010 Petras acquired Finch Diamond mine.

In contrast to DBCM, Petras chose to have BEE partners at the mine level. At the Kimberley Underground Mines, Petras chose Sedibeng Mining as its BEE partner and offered 26 per cent shareholding. At Kimberley, Sedibeng Mining was offered 17.85 per cent shareholding and Bokoni Properties 7.65 per cent shareholding. At Star Mine, Sedibeng Mining was offered 26 per cent shareholding. Petras second BEE partner is Re Teng Diamonds. This was offered 30 per cent shareholding at Koffiefontein Mine. At the Cullinan Mine, Petras has two BEE partners; the Thembinkosi Mining Investments which it offered 14 per cent shareholding and an ESOP-Petras Diamonds Employee Trust with 12 per cent shareholding. At Finch Diamond Mine, Petras' BEE partner is Senakha Diamonds with 26 per cent shareholding (Petras Diamonds 2010, 2011).

One should note here are the two different approaches to BEE deals used by the two major companies. The DBCM (which is part of Anglo American) used the SPV route to create a BEE consortium to which 26 per cent was transferred. This is similar to

⁶⁴ Its main shareholders are Al Rajhi Holdings (18.1 per cent), Saad Investment Company Ltd (17.3 per cent), JP Morgan Asset Management UK Ltd (9.3), Capital Group Investments (7.1 per cent), Scottish Widows Investment Partnerships (6.2 per cent), Black Rock Investments (5.4 per cent) and Directors (4 per cent) (Petras 2010).

⁶⁵ Cullinan mines started in 1902 but it was previously known as Premier Diamond mine, established in 1880s under its former chairman Sir Thomas Cullinan. In 1905, Thomas Cullinan presented the Cullinan (largest cut diamond in the world -539.29 carat-106.04g) to King Edward VII. Its diamonds are used in the British Crown.

the SPVs created by Anglo Platinum. The SPVs are preferred by white and foreign-owned companies, because they buffer these companies from the risk associated to having black-owned companies as partners. Petras, on the other hand, opted for partnership at the mine or operational level. The opinion of Mr Knobe, a lecturer at the University of Pretoria (informal respondent of the study) said, using a SPV to transfer deals and offering deals at the mine level, is common practice in mining asset transaction as it allows a BEE partner to be part of the management team of the mining company that conducts extraction activities. Since a SPV has nothing to do with the production process, a black shareholder may have a representation at the holding company board.

As in the PGMs sector, all the foreign junior diamond producers have BEE partners. Trans Hex's BEE partner first was Mvela Resources (but now Northam⁶⁶) with 20.3 per cent shares. Rockwell Diamond Inc. (based in UK)⁶⁷ operates through its subsidiary Rockwell Diamonds Inc. (South Africa). Its BEE partners are ZICO and African Vanguard Resources, each holding 26 per cent. The two companies are controlled by the trade union investment company of the South African Railways and Harbours Workers Union (SARHWU).

5.4.3 BEE Deals in Gold

In Chapter One, it was noted that the importance of gold in the economy has been declining, and that the sector had attracted foreign capital. According to the DME (2008a), there were five major gold mining companies in 2008.⁶⁸ These were AngloGold Ashanti, Gold Fields, Harmony, DRDGold and Western Gold. The five contributed up to 90 per cent of gold produced in the country. As in PGM and diamonds, the end of apartheid has attracted a number of completely new junior foreign companies into the field. These included Gold One International Limited

⁶⁶ See treatment of Northam under Anglo Platinum above.

⁶⁷ It has a joint venture with Steinmetz Diamond Group which crafted a pink –brown diamond (35,60) carats cut from 179.60 carat stone– Steinmetz Forevermark Jubilee Pink to mark Her Majesty Queen Elizabeth II's 60 years to the throne- 1952-2012 (see various company Annual Reports).

⁶⁸ This section benefited much from data from Virtual Metals Research and Consulting Limited, 2006, Gold in South Africa, Chapter 2, Pgs. 25 – 45; and Department of Minerals and Energy, Operating Gold Mines and Recovery Plants in RSA, 2008 and annual reports of individual companies

(GDO), Simmer & Jack Mines Limited (SIM), Village Main Reef Gold Mining Co Limited (VIL) and Witwatersrand Consolidated Gold Resources Limited (WGR).

Table 5.4 shows the BEE deals in the gold sector.

Table 5.4: BEE Deals Concluded in Gold.

Company	Black-owned Companies/Partners	Nature of Shareholding	Percentage Shareholding Transferred	Where Shareholding Exchanged
AngloGold Ashanti	Bokamoso Trust	ESOP	1.9	Company level
	Izingwe Holdings	Consortium	0.7	Company Level
GFIMSA	See Figure 6:1 and 6:2	Consortium, ESOP, Individual and JVC	10	South Deep
Harmony	ARMGold but now ARM	Company	14	Company level
	Pamodzi Gold	Company	Assets	Orkney
DRD Gold	EMO Khumo Gold SPV Pty	ESOP, Company	26	Crown, ERPM, ErgoGold
Simmer and Jack	Xelekwa Investment	Company	21.74	Company
Central Rand Gold	Puma Gold Investment	Company	26	Exploration and Recovery
Wits Gold	Tranter Kismet Invest./ Continental African Gold/ Wits Golds Women Trust	Consortium	26	Company
Gold one	Micawber Pty			
Village main Reef	Sun Platinum Holdings/ Ncholo Trust	Consortium	9.1 and 6.69k	Company level

Source: Compiled from Company Annual Reports and other Company Sources.

AngloGold Ashanti Limited (ANG) is the largest gold producer in South Africa. It was formed on April 26, 2004, when AngloGold Limited (AngloGold)⁶⁹ and Ashanti Gold Fields Limited (Ashanti which controlled gold production in Ghana)⁷⁰ combined their assets. In South Africa, AngloGold Ashanti's operations include those that were under AngloGold, but later, added more acquisitions (refer to section 2.2.2). In August 2005, the DMR granted AngloGold Ashanti new order mining rights based on transactions carried out by Anglo Gold between 1998 and 2002. This

⁶⁹ AngloGold was formed on 29 June 1998 through the consolidation of Anglo American Corporation of South Africa Limited (AAC) and its associated companies into a single global gold company.

⁷⁰ Ashanti owned 100 per cent of Anmercusa Mining (West Africa) Limited (Anmin West Africa) and several other mines in Ghana and other countries. By 2010 Anglo-Gold Ashanti had 21 operations spread in 10 countries (Argentina, Australia, Brazil, Ghana, Guinea, Mali, Namibia, South Africa, Tanzania and the United State) covering various mineral categories. The company has acquired in OroAfrica, one of the largest world-class gold manufacturers which is connected to other world class manufacturers such as JP Morgan and Metaux Preceieux (PAMP).

was allowed under the continuous consequences principle. Anglo Gold had concluded various mining deals before the new mining regulations. These mining deals included: the January 1998 sale of No.1 Shaft of the Vaal River Operations to ARM Gold Limited (ARM Gold). The contract agreement allowed ARM to benefit 40 per cent of all revenues, costs and capital expenditure and the rest to AngloGold; the 2002 sale of No. 2 shaft -Vaal River Operations to ARM for 10million (£90,000); the April 2002 sale of the Free State assets through a joint venture called Freegold for R2.523million (£22,000) to the same ARM Gold; the October 2002 disposal of its wholly-owned subsidiary- the Stone and Allied Industries- a stone crushing venture in Orange Free State to its management and black entrepreneurs for R5million (£45,000). The transactions of Orange Free State assets were divided into R1.4 million (£12,000) equity and R3.6 million (£32,000) in loans. A 10 per cent of the assets were transferred to Masakhisane Limited, a black-owned company established in terms of Small Scale and Medium Enterprises Development Initiative (AngloGold Ashanti 2012). These earlier transactions have effectively limited BEE deals done under AngloGold Ashanti when the Mining Charter became official.

Since 2005, AngloGold Ashanti has concluded only two BEE deals. The first was an ESOP under the Bokamoso Trust in 2006, involving 30,000 employees, of whom 91.5 per cent were regarded as HDSA persons. The deal specifications indicated that each of the non-managerial employees was allocated 30 free shares and 90 on loan at a 10 per cent discount. About 3.8 million shares were issued with a total value of R1.8billion, which represented 1.9 per cent of the company's share capital in 2006. The shares were to be vested equally in each year for five years starting from 2009 and ending in 2014. This deal involved negotiations between the National Union of Mine Workers (NUM), Solidarity and the United Association of South Africa (UASA) with AngloGold Ashanti. It should be borne in mind that NUM was vocal at the time of policy formulation negotiations, despite that its policy demands were much on improving workers' conditions of work, safety and housing (NUM 1995). At the implementation stage, NUM seems to be less vocal in terms of pushing more demands on acquisition of equity. NUM's position has come under challenge with the emergence of a new trade union, Association of Mineworkers and Construction

Union (AMCU), which was at the centre stage of the Marikana strikes that ended up in killings in August 2012.

AngloGold Ashanti's second deal was with Izingwe Holdings (Pty) Limited, a BEE consortium organised and chaired by Sipho Pityana (another ANC member) which acquired 1.4 million shares 2006. The two deals amounted to 2.6 per cent equity or 6 per cent production attributable to the company's South African operation. While the two deals were different, the management of Izingwe was expected to co-operate with the management of the ESOP created under the Bokamoso Trust, the chief executive of which became part of the nine people elected to the board of trustees to manage the Bokamoso Trust (Anglo Gold Ashanti 2007). Pityana was made a lead partner and was invited to the company's board. Lead partners are expected to serve as points of communication between the complying companies and black-owned companies in particular consortium and community partners. In return, lead partners are offered a larger amount of shareholding. This has been a norm in BEE deals in the mining industry. In the interviews conducted by this study with the executives of BEE companies, some executives were not happy to act as lead partners for communities.

Gold Fields International Limited (GFI) is the second largest producer of gold in the country.⁷¹ The company is a multinational operating in South Africa and Ghana and has multiple listing. It has three subsidiaries in South Africa two of which are wholly-owned (100 per cent). These are Gold Field I Mining South Africa (GFIMSA), Gold Field Operations Limited (GFO) and the third is Gold Field I Joint Venture Holdings (Propriety) Limited (GFIJVH). GFI has three operating gold mines; Kloof Driefontein Complex (KDC) situated in West Wits Line Gold Field; Beatrix (in Free State gold field) and South Deep (West Rand Gold Field). GFIMSA owns 100 per cent of KDC which is its most productive mine and Beatrix Gold Mines (Gold Fields 2009, 2010, 2012).

⁷¹ Previously it was known as Consolidated Gold Fields of South Africa Limited (CGFSA), founded in 1887 by Cecil Rhodes and Charles Rudd, heavily funded by British capital. At the height of world-wide economic sanctions, CGFSA Limited minimised its activities in South Africa and was acquired by Hanson Plc. and listed on LSE 1988.

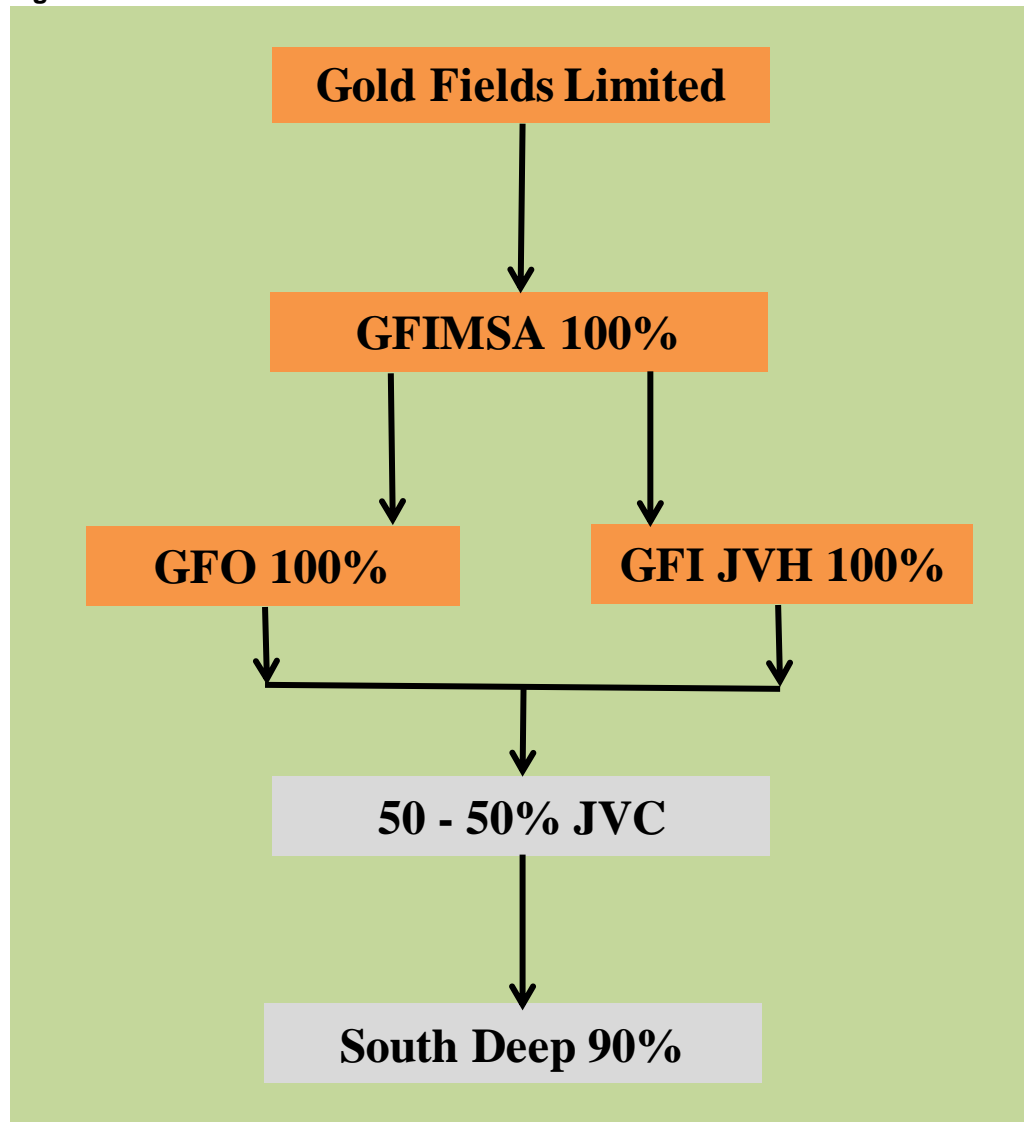
Gold Fields' journey to be BEE compliant started in 2004 when it concluded a mining equity deal at company level with Mvela Gold, which acquired 15 per cent of GFIMSA's ordinary shares for R4.139billion (£372million). Mvela Gold is part of Mvela Resources, a subsidiary of Mvelaphanda Holdings, a BEE company owned by ANC stalwart Tokyo Sexwale. Mvela Gold's shares were then exchanged for Gold Fields' shares, and thus gave Mvela Gold a 15 per cent HDSA ownership interest in GFIMSA. Since then, Mvela Gold has disposed 1.8million Gold Fields shares, and hence reducing its shareholding in Gold Fields to 3 per cent (Gold Fields 2010). This was because Mvela Gold could no longer manage to service its debts,⁷² another testimony that BEE debts are becoming a major concern. Debts have resulted in either liquidation, as in the case of Pamodzi Gold, or being taken over by another black-owned company, as in the case of Incwala by Shanduka (discussed under Lonmin above).

In 2010, GFIMSA entered into a special BEE deal over South Deep, which was 50:50, owned by its subsidiaries GFO and GFIVH. The interview conducted with Mr Peter Turner (Executive Vice President, South African region) in the course of this study provided insights on why and how the BEE deals were structured. It was necessary to share some of these details here in order to understand the complexities of ownership structures that have accompanied BEE deals. It further provided a glimpse of how white and foreign-owned companies restructure voting rights to retain control of their core assets.

Gold Fields' ownership structure in South Africa was much simpler before concluding its South Deep BEE deal. However, after the deals, Gold Fields' ownership structure became more complicated. This is indicated in figure 5.4 showing the structure before the BEE deals, and in figure 5.5, highlighting the status after the BEE deals.

⁷² According to a Sunday Times report (2 July, 2010) Mvela Resources had a debt of R4billion (£363million). It hoped to sell its Gold Fields shares for R5.5billion (£500million) to pay the debt and to use the remainder to develop the Booyseendal Platinum Project under Northam. However, its sale of 11 million fetched only R1.86billion (£145million). It was therefore forced to sell its Northam shares (12.2) to Eurasian Natural Resources Corporation (ENRC) for only R2.2 billion (£200million).

Figure 5.4: The Structure of Gold Fields Limited before BEE Transactions

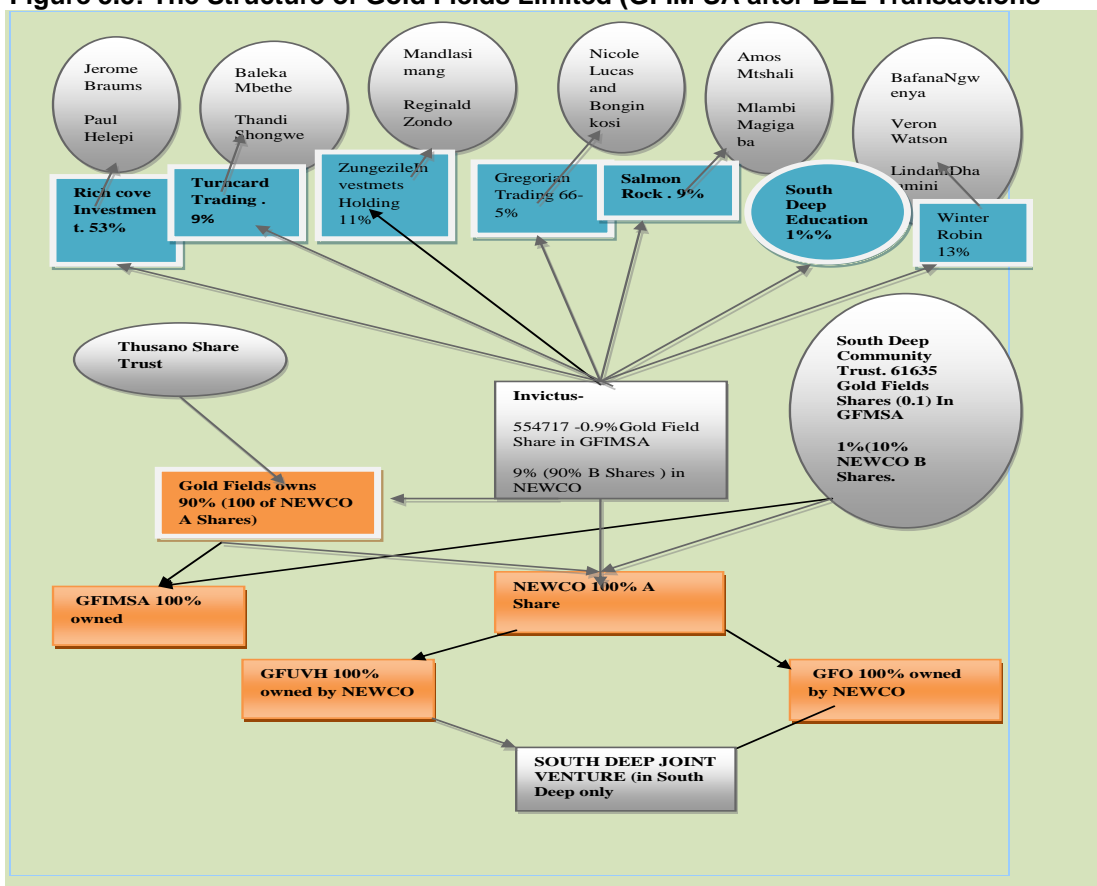


Source: GFMSA Annual Reports

As indicated in the figure 5.4, Gold Fields Limited owned 100 percent of GFMSA (its South African subsidiary). GFMSA then owned 100 percent of GFO and GFIJVH. However GFMSA's structure became more complicated after the deal. In the South Deep deal, GFMSA first step was to establish a holding company – under GFIJVH named NEWCO to accommodate the BEE companies. GFMSA acquired 100 per cent of NEWCO's A-shares which were equivalent to 90 per cent of the total company's equity. A-shares carry voting rights. The second step was to organise a BEE consortium – Invictus. The consortium has a wide list of other groups including

Rich Cove Investment⁷³ (53 per cent), Turncard Trading 118 (9 per cent),⁷⁴ Zungezile Investment Holdings (11 per cent), Gregorian Trading 66 (5 per cent), Salmon Rock Investments (9 per cent), South Deep Education Trust (1 per cent) and Winter Robin Investments (13 per cent). The new ownership structure is shown in figure 5.5.

Figure 5.5: The Structure of Gold Fields Limited (GFIM SA after BEE Transactions)



Source GFMSA Annual Report 2010

Invictus acquired 90 per cent of NEWCO's B-shares (which was equivalent to 9 per cent) of NEWCO's total equity. B-shares are similar to N-Shares and carry low voting

⁷³ Rich Cove Investment as the lead partner in the Invictus consortium is entitled to 3 board members out of the 4 board members. The other members of the consortium must agree on the fourth board member.

⁷⁴ Turncard Trading is connected to Baleka Mbethe, the chairman of the ANC until 2014, former vice president (in 2009) and speaker of the National Assembly (2004 – 2009 and re-elected in May 2014). The media in South Africa have taken the shareholding awarded to Mbethe's company worthy more than R25million (£242,000) as corruption (Mail and Guardian 6 to 12 September 2013, Sunday Times 17, 31 March 2013).

rights. South Deep Education Trust⁷⁵ then acquired 10 per cent of NEWCO's B-shares which made 1 per cent of the total NEWCO shares. Invictus and Southern Deep Community shares were donated by GFO and GFIJVH. The transaction finally cost R1billion (£72million). This was calculated using latest life of mine plant for South Deep at gold price of R300 (£27) and a discount rate of 6 per cent (Gold Fields 2010:3 - BEE deals). Gold Fields also established an ESOP –the Thusano Share Trust to which was allocated 12,578,616 shares. These were equivalent to an effective 10.75 per cent indirect interest (with no control) in GFIMSA. From the specifications of the deal, an ESOP member will retain his/her benefits after leaving employment and the benefits are transferable to his/her nominated or appointed beneficiary. Although equity ownership transfer intends to benefit black citizens, in particular, HDSAs, the ESOP does not exclude migrant workers. This is because they were the backbone of the mining labour force during apartheid. These are accommodated under the non-discrimination clause of the Mining Charter (Gold Fields Circular to Shareholders 2010:20).

It is important to note some of the justification for the selection of BEE participants in the deal and the voting rights conferred. In GFI's circular to shareholders, (Gold Fields Circular to Shareholders 2010:17) it was stated that:

"The company had regard to the DMR's request for broad based empowerment and the need to include Historically Disadvantaged Persons from other provinces in South Africa and not only Gauteng. The company wanted to identify people who had contributed to the successful and peaceful transition to democracy in South Africa which transition ultimately rebounded to the benefit of all the company's stakeholders including shareholders and who had not been beneficiaries of BEE deals to date."

Such statements indicate how white and foreign-owned companies hunt for political connectivity when structuring BEE deals (See Khela and Reddy views in section 1.4

⁷⁵ According to Gold Fields Circular to shareholders, the trust was established to benefit HDSA individuals in: (a) communities forming part of the Westonaria Local Municipality Area, being: Bekkersdal, Glenharvie, Hillshaven, Leeudoorn, Libanon, Simunye, Venterspost, Wagterskop, Waterpan, Westonaria, Zuurbekom and Thunasang Informal Settlement; (b) communities which do not form part of the Westonaria Local Municipality Area but are impacted by South Deep, being: Poortje, Jackfontein, Cardoville and farms in the vicinity and, (c) other communities that the trustee may identify that substantially meant the criteria used to identify the aforementioned communities (Gold Fields Circular to Shareholders 2010:19).

of this the thesis). It is equally important to note the expected roles of these BEE companies that are selected. In the same circular, the company states that:

“The BEE Participants will provide guidance to Gold Fields and assist the company in engaging with the stakeholders particularly local, regional and national government departments. They will assist the company in its interaction with South African mine communities and labour and help the company to roll out its Social and Labour Plans which the company has agreed with the DMR. In addition with the roll out of the South Deep Education Trust and the South Deep Community Trust to ensure that these projects are successful and deliver value to Historically Disadvantaged Persons in need of support and empowerment.” (ibid)

From the above, Goldfields expects BEE companies and the lead partners to even identify other HDSA persons that need empowerment deals and support them. For example, lead partners like Jerome Braums and Paul Helepi, leaders of Rich Cove Investment Ptyana of Izingwe, are expected to organise other blacks who could benefit from BEE deals. The dangers that could arise here are the building up of groups of BEE beneficiaries with family or friendship ties.

Invictus and the Community Trust are entitled to immediate full voting rights. The dividends are paid in phases spreading over 20 years starting from 30 July 2010. The deal also allows Gold Fields to retain full control, as it is entitled to appoint four of the five members of the Board. The fifth member automatically comes from Rich Cove Investment, as the principal shareholder of Invictus. This is one board member against four. One wonders how a single board member representing the BEE shareholders can influence the other four. The existence of dual voting rights in line with either A or B shares makes it virtually impossible for blacks who are holders of B shares to have control of the company. Control is also limited in cases of a consortium arrangement that brings together individuals and groups from diverse backgrounds, as it makes it difficult to develop a common strategy *vis-a-vis* the white or foreign partner.

Another matter is with regard to how dividends are distributed. It is stated in the deal agreement that when the dividends are received, the South Deep Education Trust is entitled to 60 per cent of any distribution made and the rest goes to other BEE

shareholders. Also important to note is the fact that the B-shares are bound by a 30 year lock-in date. In that time period, the Invictus consortium will not be permitted to dispose of any B-shares without the prior written consent of the A-share shareholders.⁷⁶ The consent can be withheld for any reason whatsoever. This puts into question the ability of BEE shareholders to get out of debt, as already mooted.

The agreement further stipulates that:

“--a B-shareholder who wishes to dispose of its B-shares must first offer all its B-shares and not some to Gold Fields, and only if the offer is not accepted by Gold Fields in respect of all its B-shares may the B shareholder dispose of the remaining B-shares to a third party at a price not lower and on terms not more favourable than the price at and terms on which Gold Fields was entitled to purchase them. No B-share may be encumbered unless Gold Fields agrees thereto.” (Gold Fields 2010:3 BEE deals)

Gold Fields’ demand to have a first option to buy back its shares without allowing the transfer of the same to other black shareholders indicates the company’s intention to ensure it gets its assets back, just in case black shareholders fail to redeem their shares or decide to get out of BEE deals. If this becomes the norm, it is not hard to envisage a situation where the economy moves back to white control, as blacks fail to retain their shares.

Harmony is the third largest gold producer in the country and started operating in 1950 under the same name. Over the years, the company has become a multinational company with its operations extending to Australia and Papua New Guinea. Harmony’s significant BEE deal was its merger with ARMgold and Avmin to acquire Avgold in August 2003. ARMGold was a subsidiary of Patrice Mosepe’s ARM. It was indicated in section 2.2 of this thesis that Avmin was created from the unbundling of Anglovaal. The merger with ARMGold involved 64 million shares that were exchanged at the ratio of 2 Harmony shares for every 3 ARMGold shares. It should also be borne in mind that once the merger was complete, ARMGold disappeared from the scene after its mother company, ARM, had acquired 14 per

⁷⁶ The thirty years lock-in period corresponds to the expected life of the mine. This basically means that the BEE partners can -not profit from the sale of their shares as the price would be determined by Gold Fields.

cent of Harmony. Harmony had another deal with Pamodzi Gold for the sale of the Orkney mines. This deal was signed in September 2006 but materialized in February 2008 –two years. The two year period is a testimony that a conclusion of a mining deal might take time to materialise. Thus most of the five year (2009) or ten year period (2014) that white and foreign-owned companies are given to comply would be spent in signing deals or paper work.

Later in 2009, Pamodzi became inundated with debts and was liquidated. Harmony then bought back its Free State Mines for R405million (£36million) from the liquidators (Pretoria News - Business Day 23 February 2010). Pamodzi's Orkney and East Rand operations were taken over by Aurora Empowerment systems whose chairman was Kulubuse Zuma, the nephew of President Jacob Zuma, and the CEO Zodwa Mandela, a relative of former President Nelson Mandela (Pretoria News – Business Day 19 December 2012; Harmony Gold 2010, 2011, 2012). Here, we see how immediate relatives of the ANC stalwarts benefit from BEE deals. This may be an indication that BEE deals were and are still the monopoly of the black nationalist elites, as no system was created to separate the ruling party from the state.

DRDGold (formed in 1992) has operations in Australia and Papua New Guinea. It has two subsidiaries in South Africa, the Ergo Mining Operations Proprietary Limited (EMO) and a treatment plant on Eastern Witwatersrand that it fully owns (100 per cent) and an exploration company -East Rand Proprietary Mines Limited (ERPM), extension 1 and 2 at Central Rand Gold Field. It also has other operations such as Brakpan plant, Knights City Deep and Crown Section. Some of these mine ventures are involved in treatment of old mining dumps. DRDGold has a BEE partner at EMO known as Khumo Gold SPV Pty Ltd. Khumo Gold is part of Khumo Bathong Holdings (Pty) Ltd,⁷⁷ an investment owned by the Ncholo family. Khumo

⁷⁷ Khumo Bathong started in 1998 as Skyprops but changed to its current name. The phrase "*khumo bathong*" means "wealth to the people" in Setswana. It is owned by Dr Paseka Ncholo, previously a senior lecturer at the University of Western Cape Law Faculty and was also involved in pre-democratic election negotiations. He later became an advisor to the Minister for Public Services and Administration. His other partners are his family members including Advocates Palesa Sedibe Ncholo and Sedibe Ncholo.

Gold was offered 4 794 889 shares (worthy R68million or £5.9million) which made 20 per cent shareholding. DRDGold also has an ESOP scheme (DRDSA Empowerment Trust) which owns 6 per cent equity (DRDGold 2010, 2011, 2012).

Central Rand Gold (from Netherland -Antilles NV), owns 74 per cent of its South African subsidiary - Central Rand Gold South Africa (Pty) Ltd. Central Rand Gold received its new order mining licences and new order prospecting rights (7) for its Main Reef areas. It has been acquiring more mine assets from other companies operating in the area, turning some of them into successful ventures. From its annual company report, Central Rand Gold produced 4,777 ounces of gold in 2011 and 8,246 in the first 6 months of 2012. Central Rand Gold's BEE partner, Puma Gold Investments, owns the remainder 26 per cent (Central Rand Gold 2010, 2011, 2012).

Wits Gold, established in 2003, has received 14 New Order Prospecting Rights. It offered a total of 26 per cent shares to its BEE partners: -the Tranter Kismet Investments, Continental Africa Gold Resources and Wits Golds Women Trust (Wits Gold 2011, 2012). Simmer & Jack has Xelekwa Investment Holdings as its BEE partner with 21.74 per cent shareholding. Gold One International has Micawber 400 Pty Ltd as its BEE partner (Gold One International 2011). The village Main Reef Gold Mining is controlled by Umbono Financial Services that has 46.5 per cent shareholding and its BEE partners are Sun Platinum Holdings that has 9.1 per cent shares and Ncholo Trust (owned by Ncholo family) with 6.69 per cent shares (Village Main Reef 2011, 2012).

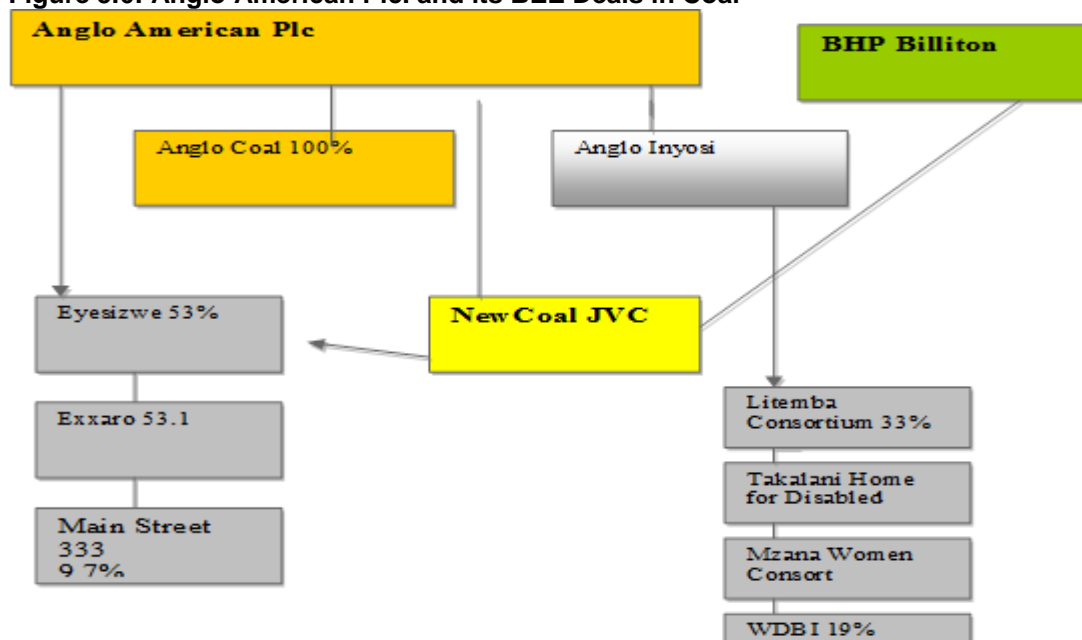
5.4.4 BEE Deals in Coal

It should be recalled that Anglo American Plc has extensive assets in the PGM, Gold, and Diamond sectors. It has also a strong presence in coal, as shown in Table 5.5. Most of the BEE transactions in the coal sector have been concluded mainly by Anglo American Plc and BHP Billiton through their subsidiary companies that were created after the unbundling process. The BEE mining deals concluded by Anglo American Plc are illustrated in figure 5.6.

Table 5.5: BEE Deals Concluded in Coal

Company	Black-owned Companies/ Partners	Nature of Shareholding	Percentage Shareholding Transferred	Where Shareholding Exchanged
Anglo American Plc	Check diagram 6:3			
BHP Billiton SA	Eyesizwe	Company	100	Malta mine
	Kuyasa Mining	Company	100	Ikhwezi, Delmas
	Optimum Coal	Consortium	100	Optimum Colliery
	Riversdale Mining/ Siyanda Resources/Aka Resources	Consortium/ESOP	51	Koornfontein
Xstrata Coal	ARM Coal	Company	20.2	Boschmans/Witcons-sold mine
	ARM Coal	Company	26	GGV Large Pit
Sasol	Eyesizwe Coal	Company	100	Glisa Colliery
Coal of Africa	Unidentified		26	Vele projects

Source: Compiled from Company Annual Reports and other Company Sources.

Figure 5.6: Anglo American Plc. and its BEE Deals in Coal

Source: Created from Anglo American Coal Shareholding Structure 2011.

As indicated in figure 5.6, Anglo America Plc. has two subsidiaries in coal, Anglo Coal and Anglo Inyosi. Anglo Coal is 100 per cent owned by Anglo American Plc. It has several coal mines in South Africa.⁷⁸ What Anglo American did in the PGM

⁷⁸ Anglo Coal alone has 11 collieries, including Bank, Goedehoop, Greensude, Isibonelo, Landau, Mafube, and Kleinkopje collieries in the Witbank area, Kriel, New Denmark Colliery in the Highveld area New Vaal Colliery in Sasolburg, Vereeniging area and MacWest project which is an extension of the Anglo Coal's New Vaal colliery in Free State (Anglo American Plc 2010).

sector, was replicated in the coal sector. Anglo American first created separate companies that hosted its BEE deals. These are Eyesizwe Coal, Exxaro Resources and Anglo Inyosi. In 1999, Anglo American Plc. and BHP Billiton created a special purpose vehicle (SPV) known as NewCoal. This was used to place Anglo American acquisitions from Gold Fields and some of its own assets that it wanted to dispose, as well as the assets that BHP Billiton wanted to dispose. The main assets that were placed under NewCoal were Matla joint venture and Matla colliery, Gilsa colliery, New Clydesdale colliery, Arnot colliery and other reserves owned by Gold Fields Coal (ANC 2012:124-125). Under its CEO, Siphon Nkosi, Eyesizwe coal⁷⁹ was chosen among three companies short-listed from 55 bidders. In 2001, New Coal assets were sold to Eyesizwe. This followed a maze of transactions. Eyesizwe Mining acquired 66 per cent of NewCoal with Anglo American Plc. having 11 per cent and Ingwe Coal (a BHP Billiton subsidiary) 9 per cent and 4 per cent went to Price Water House Coopers. Eyesizwe then listed on the JSE in 2001 (Anglo American Plc: 2002).

The second transaction was done in 2005 when Anglo American Plc created a holding company known as Main Street 333 (Pty). Eyesizwe SPV acquired 54 per cent of the holding company, IDC (15.3 per cent), TISO SPV (9.7 per cent), Eyabantu (9.7 per cent) and BEE Women SPV (11.2 per cent). The holding company was used to acquire 53.1 per cent shares of Exxaro Resources Ltd. Exxaro was created by Anglo American Plc. to acquire the Kumba non-iron ore assets that had been unbundled from Iscor. Anglo American Plc. retained 23.7 per cent in Exxaro and the other shares went to minorities (20.2 per cent) and to Exxaro Employees – ESOP (3 per cent) (Fauconnier and Mathur 2008). Exxaro's coal division has two subsidiaries Exxaro Coal (Pty) Ltd and Exxaro Coal Mpumalanga⁸⁰ (Exxaro: 2010, 2011, and 2012), as already stated.

⁷⁹ Eyesizwe Coal is part of Eyesizwe Holdings a consortium established in 1999 by Siphon Nkosi. Other members include Vicent Mtambo, Kholu Motsoene, Daphne Mashile-Nkosi and Mxolisi Ncobo.

⁸⁰ Exxaro Coal (Pty) Ltd operates the Grootlegeluke Mine, Tshikondeni Mine, Mafube Coal JV, Inyanda Mine and Exxaro reductants around Thohoyandou in Limpopo Province. Exxaro Coal Mpumalanga operates the original Eyesizwe Coal Mines -Matla mine, New Clydesdale mine, Arnot mine and Leeuwpan (Exxaro 2012).

Anglo America's third major BEE transaction involved the creation of Anglo Inyosi which pooled together some of Anglo Coal's mines and projects (including Kriel colliery, Elders, Zondergasfontein, New Largo, Phola Coal Plant and Heiderberg projects). Anglo Inyosi was also used to house a consortium of BEE partners owning 27 per cent shares. Members of this consortium are the Lithemba Consortium with 33 per cent shareholding, Pamodzi Coal also with 33 per cent shareholding and Women Development Bank Holdings (WDBH) with 19 per cent shareholding and a Community Trust. It is noted here that the BEE consortiums that took shares from Anglo Inyosi are themselves made up of a series of other consortiums. For example, the Lithemba consortium is composed of Lithemba Amalahle Mining (40 per cent), Initiative South Africa Resources- a women's group (16 per cent), two individuals acting as lead partners- Sibongile Modise and Yoliswa Balfour (15 per cent), other Business Associations (11 per cent), WOESA which is a women group (5 per cent), Mining Partners (8 per cent) and Girl Guides (5 per cent). Pamodzi Coal is owned by Pamodzi Investment Holdings (51 per cent), Impala Coal (13 per cent), Broad Based Groupings (13 per cent), Pamodzi Coal staff (9 per cent), Mzana Women Investment Club that includes the Soweto Business Executive Council and the Takalani Home for Mentally Disabled (9 per cent) and Rorisang (2.5 per cent). Others with unspecified shareholding include Imbambi Coal and Leeuw Mining (Anglo Inyosi 2010, 2011). Here we see broad beneficiaries featuring in Anglo's BEE transactions to include: women, disabled, youth, and communities. This is an indication that complying companies pay a special attention in the BEE policy demand of their transactions to be broad-based.

Another large producer of coal is BHP Billiton Limited with headquarters both in Australia and in UK.⁸¹ In South Africa's coal sector, BHP Billiton Limited is represented by its subsidiary, BHP Billiton Energy South Africa (Becs). Before January 2007, Becs was known as Ingwe Colliery Ltd. Becs operates four coal mines in the Witbank coal fields; Middleburg Coalfields in which Xstrata Plc. has 16

⁸¹ The company has diversified mineral interests including: aluminium, copper, energy coal, iron ore, manganese, metallurgical coal, nickel, uranium, oil and gas. The directors from the two offices run a single management team.

per cent, Khutala Mine, Klipspruit Colliery, and Wolverkrans Colliery. Beca has four wholly-owned processing plants located near Middleburgh and Witbank. Beca used to operate the Douglas mine but its mine reserves were merged with the Middleburgh mine and operations rationalised under Douglass--Middelburg Optimisation (DMO) Project⁸² (BHP Billiton 2010, 2011, 2012).

In its effort to be BEE compliant, Beca first sold Ikhwezi mine to Kuyasa mining, which is a black-owned company, in 1995, before the B-BBEE policy became effective. Later in 2002 it sold to the same group Delmas mine. It was indicated above that in 1999, in cooperation with Anglo American Plc, BHP Billiton established Eyesizwe and NewCoal. The two companies were used to transfer equity ownership to blacks. In 2005, Beca sold 26 per cent equity in its Zululand Anthracite Colliery to Riversdale Mining Limited. In 2007, Beca sold 51 per cent equity in Koornfontein to Siyanda Resources and Aka Resources, both black-owned. Again in 2008 Beca sold its wholly-owned Optimum collieries to Optimum Coal Holdings, a group of BEE companies and other non-BEE shareholders. The BEE group includes Monkge Coal Investments (5.28 per cent), Micsan Investments (7.55 per cent), Mobu Resources (2.26 per cent), Kwini Mining Investments (10.33 per cent), Employee Trust (9.93 per cent), Community Trust (9.93 per cent) and Warrior Coal (15.9 per cent) which, together, owned 61 per cent. The non-BEE shareholders are AMCI (11.91 per cent), Mercuria Energy (4.51 per cent). Mercuria Energy owns 48 per cent shares of Kwini Investment. There is also 17.54 per cent offered to the public and 4.07 per cent to individuals (Optimum Coal 2010). In the same year (2008) Beca continued to sell and disposed-off its Koornfontein Mines (19.2 per cent), Sentula Mining (49.99 per cent) and Inkwali Resources (4 per cent). All these were bought by Optimum Coal in 2010; the Koornfontein Employee Trust and Optimum Employee Benefit Trust who were Beca's BEE partners became part of Optimum Coal. Optimum Coal then registered on the JSE (Optimum Coal 2010).⁸³

⁸²The problem that occurred while collecting data about Beca is the way it refers to its assets, it lists a number of its potential coal mines as 'projects' when they are actually operating mines and its exploration projects and deposits at an earlier stage as 'miscellaneous'.

⁸³ Optimum Coal has been taken over by Xstrata Glencore (through its subsidiary Purito BV and Cyril Ramaphosa Lexshel. The two now own 71 per cent equity in optimum coal (Sunday Times 22 December 2013).

Another main company involved in coal is Xstrata Plc.,⁸⁴ a company that emerged from the unbundling process and previously was known as Sudelektra Holdings. Xstrata is not listed on the JSE but in other listings abroad. In the South Africa's coal industry, Xstrata Plc operates through its - subsidiary Xstrata Coal South Africa (Xstrata Coal), and which has become a major coal producer. Xstrata Coal South Africa has several collieries around Witbank and iMpunzi.⁸⁵ Xstrata Coal's main BEE partner is ARM Coal. Xstrata Coal's deals with ARM were concluded both at the company and at mine levels. At company level, Xstrata transferred 20 per cent of equity to ARM and at the mine level; ARM Coal was offered a 26 per cent at GGV Large pit (part of Goedgevonden) 20.2 per cent at Boschmans and another 20.2 per cent at Witcons done in August 2009 (Xstrata 2010).

Sasol Mining (Pty) Ltd is another important company in the coal sector. The company is not part of the JSE. Sasol Mining's importance in the mining industry is as a producer and one of the main domestic buyers of coal. It is a wholly-owned subsidiary of Sasol Limited, is a major petrochemical company.⁸⁶ Sasol Limited produces about a fifth of the country's coal output and fully owns most of its collieries concentrated around Secunda.⁸⁷ Almost the entire production from Sasol Mining is used by its parent company for coal fuel production and buys extra coal from other producers to meet its needs. Its procurement policy has been a big boost for domestic coal producers, including some of the BEE companies. Sasol Mining's

⁸⁴ This is an Anglo-Swiss Mining company founded in 1926, based in Zurich and London. Until 2002 it was known as Sudelektra. It has interests in 20 countries and is involved in alloys, coal, copper, nickel, zinc, and in technical expertise. World-wide it controls the export of thermal coal which is used to produce electricity. Xstrata merged with Glencore in December 2012 to form Glencore Xstrata which was listed on the JSE in November 2013 (Sunday Times 22 December 2013).

⁸⁵ Xstrata Coal collieries are Goedgevonden (which include GGV Large pits and Goedgevonden surface operation); Tweefontein North (TWF large pits, 1-Seam and 2-Seam, Boschmans, Boschmans Dump 1, Witcons and Central Plant); Tweefonten South (South Witbank); iMpunzi Division (iMpunzi East, iMpunzi South, iMpunzi North and iMpunzi Mini pits) and ATC (ATC dump1, 2, ATCOM 1 ATCOM and ATC and other projects (Zonnebloem project) (DME2009a, DMR 2010d).

⁸⁶ Its major shareholders include Government Employee Pension Fund (13.1 per cent) and IDC (8.3). Other shareholders include a number of fund managers: PIC Equities (9.9), Allan Gray Investment Council (8.3), Coronation Fund Managers (4.3), Investec Asset Management (4.1), Old Mutual Asset Managers (2.6), Black Rock Incorporated (2.6), The Vanguard Group Incorporated (2.4) and Sanlam Investment Management (2.3) (Sasol 2010).

⁸⁷ Around Secunda it has Sigma mine Bosjesspruit, Brandspruit, Middelbult, Twistdraai, Syferfontein and Twistdraai colliery in Highveld coalfield, Thubelisha and Impumelelo. Others include plants - Infrachem plant and Sasol Synfuel.

BEE compliance involves the deal concluded at Glisa colliery with Eyesizwe Coal (a BEE company). In 2008, Sasol Mining was involved in the Inzalo shareholding scheme in which shares were sold to HDSAs. To attract HDSAs the company had to advertise wildly and shares were transacted countrywide through the South African Post Offices (Sasol 2010, 2011, 2012).

As in other mineral categories, foreign companies are having extensive exploration and mining ventures in the coal sector. These are companies that have entered in the country after the end of economic sanctions against South Africa's apartheid regime. Most have complied with the Mining Charter by offering 26 per cent to HDSA companies upon obtaining their licenses. These include Coal of Africa, Total Coal International (Paris), Anker Holdings B.V (from Netherlands), Sudor Coal, Total Energy Service (Hong Kong) and Kangra coal. Coal of Africa retained 100 per cent ownership of its Mooiplaats coal project situated in the Ermelo coalfields but offered 26 per cent at Vele coking coal project located in the Limpopo Province retaining 74 per cent. Total Coal has a 50:50 partnership with Mmakau Mining, a company associated with Bridgette Radebe (the wife of Jeff Radebe, the Minister of Justice and Constitutional Development and a sister to Patrice Motsepe who owns ARM). Kangra Coal offered 30 per cent shareholding to Shanduka Resources a company associated to Cyril Ramaphosa (DMR2010d).

It should be noted here that the coal industry has attracted more black-owned companies and mostly of micro and small scales than any other category in the mining industry. These use simple technologies, operate independently (do not have white or foreign partners), and are not listed on the JSE. Being not on the JSE exacerbates the problems of estimating mineral assets which are under the ownership and control of blacks, as indicated earlier. Based on data compiled by the DME/DMR, BEE companies operating in coal have grown from 2 in 2002 to 33 in 2009 (DME 2010d). Table 5.6 indicate some of the companies that have emerged.

Table 5.6: Some Black-owned Companies Operating in Coal

Black-owned Company	Controlled Collieries
Kuyasa Mine	Ikwezi, Delmas Coal-
Leew Mining and Exploration	Leew Vaalkrantz
Mashala Resources	Wesselton and Geluk Mines, Ermelo, Msukaligwa
Northern Coal	Mimosa mine Polmaise Colliery-Witbank
Riversdale Holdings	Zululand Anthracite at Nongoma
Sumo Coal	Kpermyn Colliery
Sacmh Pty	Ilanga and Umlabu Colliery
Slater Coal	Oaviemore and Mgdalena
Shanduka Coal	Graspan and Side Minera, Rietfontein Mine
Siyanda Resources	Koofontein mines and Gloria section
Stuart Coal	Weltevreden-Delmas

Source: Compiled from the DMR List of BEE Companies

Some of the factors that have facilitated the increased entry of black-owned companies in the industry include high domestic demand for coal. The domestic users of coal include: Eskom (over 40 per cent) to power electricity plants, Sasol (20 per cent) for producing petrol-chemicals, general industries (8 per cent); metallurgical activities (4 per cent) and merchants (4 per cent) (DME: 2009a). Another factor is the technology used in coal mining. Most coal mining is carried out from open cast mines (53 per cent), bore-and- pillar (40 per cent), stopping (4 per cent) and long-wall mining (3 per cent). It is the open cast mining that has attracted many BEE companies, because of the simple technology used. Moreover, coal export trade is a very lucrative business; for example in 2007, the 182.8mt sold domestically fetched R19.7billion (£1.4billion) while the 67,7mt exported fetched R24.4billion (£1.7billion).

Although few black-owned companies have managed to enter the export market, according to the DMR (2009a), one major concern of the BEE coal producers has been the entry into the export market. The Richards Bay Coal Terminal (RBCT) created in 1973 to facilitate coal export is still controlled by the main white and foreign-owned companies. In 2007 BHP controlled 37 per cent of RBCT, Anglo Coal 27 per cent, Xstrata 29 per cent and Kangra Coal 2 per cent. Total Coal and Sasol later joined the group. These are the companies that also control the washing facilities and other logistic services necessary for coal exportation. As late comers, BEE companies could not penetrate the coal export trade, except for a few who were

in partnership with the old RBCT owners. Eyesizwe and Exxaro Coal, for example, automatically benefited from coal export.

The DME/DMR has been instrumental in helping the BEE companies break into the export market. In August 2002, the DME/DMR called for a coal export forum to negotiate an export quarter for the BEE companies. Immediately, a Coal Industry Task Team was created that resulted in an initial offer of 1mn tonnes to BEE exporters. Through further negotiations, the quarter increased to 4mt in 2006/2007. Despite all these changes, the coal export trade is still controlled by the main miners, while a chain of small producers compete for the offered allocation (DME 2007c). Apart from these efforts, blacks entering in coal experience problems in getting access to export coal market as their doing so depends much on facilities that are owned by white and foreign-owned companies. This came out in interviews conducted by this study with directors of mining companies.

5.4.5 BEE Deals in other Mineral Commodities

There are a large number of minerals under this category, most of which are involved in dimension stones, colliery and other semi- processed mineral activities. Micro and small scale companies are not bound by the BEE policy. The study attempted to limit itself to ferrous and non- ferrous minerals⁸⁸ and mineral sands as indicated in Table 5.7.

⁸⁸ Ferrous minerals include: chrome, iron ore, vanadium, ferro- alloys, manganese and silicon/ferro silico and Non-ferrous minerals include Aluminium, Alumino-Silicate minerals, Antimony Cobalt, Copper, Lead, Nickel, Tantalum / Niobium, Titanium, Tungstein, Zinc, Zircon and Zirconium

Table 5.7: BEE Deals Concluded in other Minerals

Company	Black-owned Companies/ Partner	Type of Black-owned Company	Percentage of Shareholding Transferred	Where shareholding Exchanged
Anglo American Plc. (Kumba)	Exxaro	Company	26	Thabazimbi and Sishen Iron Ore
Vedata Resources	Exxaro	Company	26	Black Mountain Mine lead and zinc
Samancor Manganese	Several Black Consortiums +women group	Consortium	26	Company level
Palabora Mining Company	Palabora Copper consortium +Community	Consortium.	26	Company level
International Mineral Resources	Batho ba Rena Consortium	Community/ consortium	28	Samancor Chrome – Company level
Xstrata	Merafe Resources	Pooling and Sharing	20.5	Ferrochrome
	Bakwena ba Mogopa	Community	26	
Assore	Bokamoso Trust	Consortiums	14.1	Main Street 350
	Shanduka Resources	Company	11.6	Main Street 343
	ARM	JVC in Asamang	50-50	Manganese
Richards Bay Minerals	Community/company	Consortium	26	Company level
Lafarge	Consortium	Consortium		Company level

Source: Compiled from Company Annual Reports and other company Sources.

As in the other mineral categories, Anglo American Plc. dominates here. It operates through a number of subsidiaries. In iron ore, its subsidiary is Kumba which operates the Thabazimbi and the Sishen Iron Ore mines.⁸⁹ Its BEE partner here is Exxaro, which has already been discussed in section 5.4.4. Exxaro owns 26 per cent shares in the two mines (Kumba Iron Ore 2011, 2012). Anglo American Plc. and BHP Billiton, also jointly owned Samancor, which later split into two: Samancor Chrome and Samancor Manganese. Samancor Chrome was in 2005 sold to Kermas South Africa but in 2006, Kermas sold 32.4 per cent to International Mineral Resources (IMR), a company which later completely bought out Kermas in 2009.⁹⁰ Its BEE

⁸⁹ Note that Sishen iron ore fields had become a point of contention after Mittal failed to renew its old order rights over the fields. The DME awarded the rights to a BEE company-Imperial Crown Trading 289 controlled by President Zuma's friends (the Gupta Family) and relatives. Kumba Iron Ore then challenged this in court. Kumba won the case against the DME after a series of appeals (Pretoria News – Business Day 21 August 2010).

⁹⁰ Samancor Chrome owns Western chrome which operates Millsell, Elandsdrift and four sections of Elandskraal situated in Waterval and Mooiooi. Some of the Elandskraal sections are closed Its other mines includes Eastern Chrome Mines, Steelpoort section, in Winterveld, Doornbosch section (mine

partner is Batho Barena consortium with 28 per cent shares. The shares were bought at a company level. Batho Barena consortium is led by Enlobo Holdings (14 per cent), Samancor Workers Trust (5.6 per cent), Sibilo Investments Local Communities (4.2 per cent) and Nanka Investments -a women group (4.2 per cent) (ANC 2012 156). Samancor Manganese has a wide range of ventures that include mining extraction and processing plants.⁹¹ In 2010, Samancor Manganese sold 26 per cent to a black consortium composed of Ntsimbintle (9 per cent), NCAB (7 per cent), IZIKO (5 per cent) and the HMM Education Trust (5 per cent). However, Ntsimbintle is also a consortium made up of Safika Resources, Nkonjane, the Kgalagadi Development trust, the Natural Resource Agreement Fund, the Retrenched Workers Association, the Northern Cape business men and women groups. The women groups include Wiphold, Northern Cape Women in Mining and Hotazel Women Association.

Anglo American Plc. owned 74 per cent of Black Mountain Mine with Exxaro as its main BEE partner. Later, Anglo American Plc sold the mine to Vedata Resources,⁹² but Exxaro was retained as the BEE partner under Vedata. The Black Mountain mine produces lead and zinc. Anglo American with Rio Tinto also owns the Palabora Mining Company (PMC) which produces copper, iron ore, phosphate rock and sulphur (major ingredients in making fertilizer). To accommodate BEE partners, Anglo American and Rio Tinto in cooperation created Palabora Copper as a subsidiary of Palabora Mining Company (PMC). They used Palabora Copper to transfer 26 per cent shareholding to BEE partners. These include: A Community Trust incorporating the Makushane, Selwane, Maseke, Mashishimale and Majeje tribes, which together acquired 10 per cent shares; the Palabora Copper Employee Trust which acquired another 10 per cent and; The Negota Consortium (chaired by

closed), Montrose section - Mpumalanga (sold to Madwika Mining). Other producing areas include Tweefontein sections, Lannex Section (1 and 2) in Grootboom farms.

⁹¹It owns Wessels, Mamatwan and Gemco Mines. Its alloy plants include – Metal Alloys Temco, Elgen, Metrec and Manganese Metal Company. It produces ferro alloys through Batchlako Ferrochrome that operates Palmiet Ferrochrome in Krugersdorp (mothballed), Ferro Metals, Poschrome JV, and Chrometals JV in Burgersdorp - Middleburg, Tubatse Ferrochrome at Steelpoort, Metalloys Advelly Pty JV at Meyerton and Manganese Metal Company with operations in Krugersdorp and Nelspruit.

⁹² Vedata Resources Plc. is listed on the London Stock Exchange and its portfolio included copper, zinc, lead, iron ore and commercial energy (RNS News 8 May 2010).

George Negota, a former director of Palabora Mining) owns the remaining 6 per cent shares. Again, here we see another example of a broad based deal that includes groups of tribes (Palabora Mining Company 2010).

Xstrata is a main producer of ferrochrome. Xstrata owns two furnaces located in Rustenburg. Its main BEE partner is Merafe Resources with a 20.5 per cent shareholding. This partnership involves a Pooling and Sharing Venture (PSV).⁹³ Merafe is owned by Royal Bafokeng (31 per cent shareholding), IDC (23 per cent), Allan Gray (14 per cent) with other minorities (23 per cent). Xstrata's second BEE partner is the Bakwena ba Mogopa, another community shareholder which has 26 per cent. The third is Idwala Magnetite, a subsidiary of Idwala Industrial holdings controlled by Tiso Group (Xstrata 2010).

Assore is another company that is engaged in the production of manganese, chrome and other related minerals. Assore's shareholders include Dresteel Investment who holds 52.43 per cent and minorities have 21.50 shareholding. The remaining shares were acquired by its two BEE, partners Bokamoso Trust and Shanduka Resources, in a rather complex maze of shareholding. Assore and its BEE partner each created main street companies. Assore created two; Main Street 350 and Main Street 460. Assore fully owns Main Street 460 but used Main Street 350 to conclude BEE deals. Assore offered its BEE partner, the Bokomosos Trust, 51 per cent, leaving Assore with 49 per cent. Likewise, Shanduka Resources created Main Street 343 that it fully owns. It used this to acquire 11.79 per cent in Assore. An indication of how black-owned companies like Shanduka try to catch up with strategies used by the incumbent companies. At its Cato Ridge Alloys JV, Assore partnered with Mizishuma Ferro-alloy Company and Sumitomo Corporation, all from Japan. The company's main BEE partner is ARM in a 50:50 joint venture in a company they

⁹³ In a PSV a group of mine owners would pool together their mineral- ores at one smelter to exploit plant capacity. Merafe was initially entitled to 11 per cent of EBITDA. In 2005 this increased to 17% in 2005 and to 20.5 per cent in July 2006. Xstrata Western operations use Rustenburg smelters, Wonderkop smelters and the Boshhoek smelters. These source their ores from the PSV's mines that include Krondaal, Waterval, Wonderkop, Boshhoek and Horizon. The Lydenburg smelter and Project lion smelter located in Steelpoort source their PSV's ore from the Thorncliffe and Helena mines situated outside Lydenburg.

created called Assmang. Assmang is engaged in the production of manganese. Assore also produces chrome through Dzaresriver Chrome and Machachadorp Works, iron ore through Cato Ridge Works and alloys through Cato Ridge Alloys JV (Assore 2010).

BHP Billiton Plc. is involved in several ventures in this mineral category. It is the main producer of aluminium through its subsidiary - the BHP Billiton Aluminium South Africa Ltd. Its main producers are Hillside Aluminium and Bayside Aluminium and the Zimco Group Pty Ltd which controls the Zimco Aluminium Company Pty Ltd based in Germiston.⁹⁴ BHP Billiton Plc. and Rio Tinto Plc. jointly own Richards Bay Minerals (RBM) that produces Titanium and Zircon.⁹⁵ The RBM operations are undertaken by two companies: Tinsand Pty Ltd Mine which undertakes the dune mining and mineral separation operations and Richards Bay Iron and Titanium Pty Ltd that undertakes the smelting and beneficiation process. RBM's BEE partners fall into two groups: The first is a community trust that incorporates the Sokhulu, Mbonambi, Mkwanazi and Dube communities. The second group is the Blue Horizon Investments, a consortium composed of seven investor groups. In total, the two groups were offered 26 per cent shares in Richards Bay Minerals (Richards Bay Minerals 2011, 2012).

Mineral sands mining has attracted new investors, among these are Mineral Resources Commodities and Southern Mining Corporation. The Mineral Resources Commodities is an Australian listed company and operates in South Africa through Trans-World Energy and Mineral Resources (TEM). TEM's BEE partner is the Xolobeni Empowerment Company (Xolco). Southern Mining Corporation acquired mining rights in the Bothaville heavy mineral occurrence. Its major partners are communities around the area.

⁹⁴ Aluminium processing is not covered by the mining charter as it involves manufacturing processes. There are many secondary producers and semi manufacturers of other semi-processed minerals of aluminosilicate, andalusite, cyanided and sillimanite. Some of these minerals are used in refractory activities (mainly steel production).

⁹⁵ Zircon is used in refractories as foundry sand moulds. It is also used as a corrosion resistant metal in nuclear reactors and chemical processing equipment, glazes in pottery, ceramics and TV glass. Until 2006 zircon beneficiation did not take place in South Africa at all. Geratech then developed the technology and remains the only beneficiation company of Zircon in the country.

5.5 Black-Enterprises and Black-Empowered Companies

From the analyses of compliance by individual companies presented above and based on the 72 companies in the sample, it is possible to answer the second objective of the thesis; that's, to establish the extent to which mining companies have qualified to be re-classified into black enterprises (50+1 vote), black-empowered enterprises (25+1 vote), women enterprises and community or broad based enterprises.⁹⁶

Out of the 72 companies in the sample, there are 21 companies (29 per cent) that are black enterprises (with 50+1 vote), 10 of which are BEE empowered companies (25+1 vote) (see appendix 10.7). Those with 50+1 vote include African Rainbow Minerals and Exxaro Resources. The two are most diversified and control over 72.5 per cent of blacks assets on the JSE. Others include Royal Bafokeng Platinum, Merafe Resources and South African Coal Holdings. These according to Berle and Means (1932) are companies with majority shareholding and are expected to exert control in their companies. They are also expected to have high black representation on the boards and senior management. This collaborated by the findings of Chapter Six of this thesis which explored black representation in the board of directors of mining companies.

Foreign-owned companies dominate the mining industry. While these include the old and well known ones such as Anglo American and BHP Billiton, they also include numerous completely new ones which operate through their subsidiaries. Upon obtaining their licenses, most foreign-owned companies transferred 26 per cent shareholding to blacks. Some of the black-owned companies that have become shareholders in foreign-owned companies include Savanna Consortium, Imbani Platinum, Sedibeng Mining, ReTeng Diamond, Senaka Diamonds, Puma Gold Investments, and Palabora Copper. Berle and Means regards as minority shareholders. With the 26 per cent shareholding by black-owned companies, it is expected that there would be some form of black representation on the board of the

⁹⁶ It is cautioned here that the control structure might have changed, this is scenario therefore prevailed at the time of data collection

foreign-owned companies relative to the size of the BEE shareholding. This has not been the case, as shown in Chapter Six.

It was also the demand of the Mining Charter and the B-BBEE Act that beneficiaries should be of a broad-based nature. This means that, through ESOPs), women, communities where mining takes place, the youth in the country in general and the disabled should benefit. ESOPS have benefited from the industry. Lonmin, Petras, Anglo-Gold Ashanti, Samancor Manganese and Optimum Coal all have concluded deals with ESOPS. With regard to women enterprises, the Mining Score Card called for 10 per cent participation by women in the mining industry. From the analysis of compliance at individual mining companies, there are few women groups and individuals who have joined the mining industry. Many are part of consortiums which have benefited from shares offered by white and foreign-owned companies. For example: Bridgette Radebe (the wife of Jeff Radebe, the Minister of Justice and Constitutional Development) heads Mmakau Mining; Baleka Mbete (Speaker of the National Assembly) is part of Turncard Trading consortium; Sibongile Modise (wife of former Minister of Defence) and Yoliswa Balfour (wife of former Minister of Sports and Culture) are lead partners in Lithemba consortium. One need to note here the political connections of the women beneficiaries identified above. This represents an example of cronyism in the BEE deals. Women groups form part of BEE consortiums. Other women groups include: The Women Development Bank Holdings (WDBH), South African Women in Mining Association (SAWIMA) and 'Initiative South African Women in Resources'. There are also a series of women trusts that have become beneficiaries. For example, Ponahalo Holdings created a women Trust to which was allocated 17.5 per cent equity and there is a Wits Gold Women Trust.

The analysis above has revealed that communities (through their trusts) have in general become some of the main features of BEE deals in the industry. The most prominent one is the Royal Bafokeng Nation which controls three JSE registered companies: Royal Bafokeng Platinum, Merafe Resources and South African Coal Mining Holdings. Other community participants include the Bakubung Ba Ratheo

that had 27 per cent of Wesizwe platinum before it sold out shares to the Jinchuan Company and Bakgatla Ba Kgafela. There are also a number of broad based groups that form part of consortiums that have bought shares in the mining companies. Their shares range between one and ten per cent. These are dependent on lead partners who join the board of the white and foreign-owned companies. From the data presented above, this research could not establish significant number of youth and disabled groups benefitting from BEE. Lastly, N shares, or shares with low or no voting rights, have also been used in BEE deals. The deal between Gold Fields Limited with its BEE partners, Invictus, in South Deep, has been shown above.

White and foreign-owned companies have taken BEE partners at different levels but most are at main company level, and others are at operational (mine level) and project level as can be seen from the various tables in this chapter. Being at company level, blacks are expected to benefit from attaining control. This is not happening much as we see in Chapter Six that black representation in white and foreign-owned companies is low. The discussion above has also shown that there are white and foreign-owned companies have a choice on where to transfer equity ownership to blacks. They leave to themselves the most lucrative mines where they operate without BEE partners. This is the case with Anglo Platinum that, apart from having many BEE partners, still operates its most profitable platinum mines with no BEE partners. Anglo Coal operates its whole-owned coal mines, leaving its subsidiary Anglo- Inyosi to deal with BEE partners.

5.6 Conclusion

To conclude, from the above study findings is that, in principle, white and foreign-owned companies have complied with the MPRDA and Mining Charter in terms of selling shares to blacks and making them business partners. The numbers of BEE deals and participants have grown considerably, in contrast to Gqubule's (2006) criticism that the majority of blacks have become spectators who celebrate the success of others.

Using market capitalisation of JSE listed companies (2011), estimates of equity shareholding transferred to blacks done by this study show that the compliance levels have remained low at 7.4 per cent (of R1.8trillion or £160billion) of the JSE. This is in line with the findings by the DMR (2009c) that put compliance at 9 per cent of R2trillion (£181billion) and KIO (2010) at 5.27 of R1.8trillion (£160billion). There has also been a growth of mining assets from R760billion (£69billion) envisaged at the time of signing the Mining Charter to R2trillion (£181billion). This study has explained limitations of using JSE data to estimate equity transferred to blacks, (see Chapter Four). To deal with the limitations, the study has explored mining deals concluded in all mineral categories by individual companies. The investigation revealed over 100 mining companies which include white and foreign-owned companies and black-owned companies and shareholder of different kinds. These include community shareholders, consortiums and ESOPs who are involved in BEE deals. The largest numbers of BEE deals across all mining categories, however, have been concluded by two companies: Anglo American and BHP Billiton. It is the same two companies that were driving the unbundling process. It seems the unbundling has strengthened their mineral assets.

White and foreign-owned companies had the freedom to choose which mining ventures to keep for themselves (100 per cent owned) and which to sell to blacks. This enabled the foreign-owned companies to retain the most lucrative mining assets for themselves. From the interviews conducted for this study with executives of black-owned companies, among the complaints were that white and foreign owned companies sold to them marginal mines (which were coming to the end of their operations) or projects that were difficult to operate because of lack of infrastructures. This has grossly affected their ability to make profits from their newly acquired assets. Many white and foreign-owned companies opted to conclude deals at mine level; this may limit their influence in the decisions made by the main companies.

Black partners cannot easily meet their financial obligations and are forced to sell their shares back to the sellers (white and foreign-owned companies) in order to get

out of debt and raise capital to sustain some of their assets. This dilutes black shareholding and sheds their control to sellers. Pamodzi Gold, a black-owned company which was liquidated had to sell back some of its mines to the original seller (Harmony). Wesizwe sold part of its equity to Jinchuan in order to fund its Bakubung mine project. Incwala had to sell to Shanduka in order to decrease debts. It is likely that without financial support from the government, many existing deals are likely to revert to the original sellers.

White and foreign-owned companies have resorted to creating separate companies to host black shareholders- SPVs and HOLDCOs and imposed conditions on their black partners. For example, Anglo American and BHP Billiton helped to create Eyesizwe and Exxaro. Different companies are used to minimise blacks' meaningful roles in the white and foreign-owned parent companies. Gold Fields represents an example of the conditions that white and foreign-owned companies impose on the BEE companies when transferring equity ownership. Invictus, its partner in South Deep mine was required not to dispose its shares to a third party but only to Gold Fields itself. In addition, Goldfields used lock-in requirements to ensure Invictus stays in the BEE deal. The idea is to hold on to the assets, in the event Invictus wants to opt out of the original mining empowerment deal for whatever reasons.

The study has also focused on community shareholding, a matter that shows that mining companies are no longer able to by-pass the communities that occupy the same land as the one being mined. White and foreign-owned resorted to creating trusts to which shares are allocated and where payments are made for broad community development projects. For example Richards Bay Minerals, Assore and Palabora Mining have all created trusts for the communities that they transferred equity. The creating of community trusts has merged with corporate social responsibility that every mining company has to the communities in which it operates, as indicated by Busacca (2013) and Rajak (2012).

In the absence of strong and permanent administrative structures, community and consortium shareholders depend on 'lead partners'. These are offered a larger

percentage of shareholding than the rest in the BEE deal. Lead partners are expected to be go-betweens of the white and foreign-owned companies and communities or consortium shareholders. By having go-betweens, white and foreign-owned companies indicate that they do not want to directly involve themselves with communities and consortiums and are telling black business counterparts who seem to have a better understanding of BEE shareholding issues to 'sort out their brothers' problems. From interviews conducted by this study, lead partners are complaining that they are shouldering more responsibilities to administer BEE deals where communities are involved. Directors of white and foreign-owned companies want the government to offer directions on how the relationship at community shareholders should be conducted.

White and foreign-owned companies prefer well-established black-owned companies and much better if these are also having political connections as partners. Because of this questionable practice, well-established black companies have benefited over and over again from white and foreign-owned companies. For example ARM, Shanduka and Mvelapanda have continuously benefitted from a number of BEE deals. In addition the well-established black-owned companies take over shares of other black-owned companies that are facing debts or being liquidated. For example, Shanduka took over shares from Incwala another BEE company. A preference for black shareholders has been influenced by political connectivity. For example, Kulubuse Zuma (the nephew of President Jacob Zuma) and Zondiya Mandela (a relative of former President Nelson Mandela) have acquired states. Others include women who are connected to high profile politicians or the ANC party. These include Sibongile Modise (wife of former Minister of Defence), Yoliswa Balfour (wife of former Minister of Sports and Culture), Baleka Mbete (Speaker of the National Assembly) and Bridgette Radebe (wife of Jeff Radebe, the Minister of Justice and Constitutional Development and a sister to Patrice Motsepe who owns ARM). Bridgette Radebe is apparently, the sister of Cyril Ramaphosa's wife. Ramaphosa is the current Deputy President and, seemingly, bound for the throne. In short, BEE is fundamentally incestuous.

.

6 The B-BBEE Policy and Management and Control in the Mining Industry

6.1 Introduction

This Chapter gives study findings on the extent to which blacks have attained management and control in the mining industry which is part of objective one of this study. The part on equity ownership was explained in Chapter Five. This part of the objective is met by explaining variables related to mining control (board characteristics) and the management (management characteristics) that were mentioned in Chapter Four (section 4.5). The 2002 Mining Charter prescribes to white and foreign-owned companies to establish a baseline target of 40 per cent HDSAs' participation in management by 2009. The Amended Mining Charter and the New Mining Score Card in 2010 made a clarification on the target and called specifically for 40 per cent black representation on the board of directors and senior management of white and foreign-owned companies. By having black directors as part of white and foreign-owned companies, the government wants to ensure that blacks participate in the management and control of mining companies, irrespective of shareholding.

The general understanding of the BEE policy makers was that the control of companies lies in the hands of the boards and senior management as the main decision makers. This understanding is premised on the classical theory of the separation between ownership and control, as argued by Berle and Means (1932). Based on their study of 200 companies in the non-financial sector in the US, Berle and Means concluded that modern companies or firms have dispersed ownership resulting in management control. The first section of this Chapter explores the issue of corporate control from the general literature as a background to the treatment of management and control under the BEE policy.

The literature on corporate structure analysed in the first section of this chapter indicates that the relationship between shareholders and management is very often

country-specific and influenced by the laws of the country, ownership structures and other control patterns. Section two thus concentrates on South Africa's old ownership and control structure that existed before the coming of the new regulatory framework. As indicated in Chapter Two (section 2.3), before the unbundling, South Africa's corporate structure had high concentration levels, cross shareholding and interlocking directorship. Understanding the past ownership structure enables one to contextualise the Mining Charter's call for management and control. Section three explains the post –democratic corporate structure in South Africa. It is revealed that, despite all the changes after the unbundling of the conglomerates and the entry of new foreign companies, the old ownership structure still persists. Sections four and five present the findings of the study and examine the level of black representation on the board of directors and top management of mining companies. The analysis is based on data collected on 468 board members and 226 senior managers in various mining companies used in the sample.

6.2 Control of Corporations

The term corporation is defined by Cauley, (1968:31-32) as a business owned by three or more stockholders (or shareholders or security holders). A corporation comes into existence by the process of obtaining a charter from the government to own stocks in a corporation. He uses the terms like corporation; firm; company and enterprise interchangeably. These terms have also used in similar manner in this thesis.

The debate on corporate control has been greatly influenced by Berle and Means (1932). This thesis discusses issues of equity ownership and control and management from an economic view of agency theory. The agency theory was brought up by Means (1930, 1931) and Berle and Means (1932) who stated that before the development of modern firms or corporations, the power to control originally resided in the same group of people where owners managed their own enterprises. This has changed.

Based on their study on 200 large non-financial companies listed on the New York Stock Exchange, Berle and Means (1932) concluded that the development of large modern corporations has given rise to dispersed ownership structures and a separation between those who own (shareholders) and those who control the corporations (managers). Modern corporations could, therefore, be considered as management controlled and not owner controlled. The control of firms by managers leads to an agency problem between the owners (also referred to as principles) and managers (or agents) because of the divergent objectives between the two groups. While the owners' main objective is to maximise profits, the managers might have other motives such as larger firm size, stronger market power, more sales, high growth levels to get prestige, higher salaries and other perks (Roshan 2009). It is this separation that increases costs to monitor managers in firms. The interest of this thesis is not to explore the effects of the separation between ownership and control such as costs to the firm but to use the Berle and Means theory to explain whether South African firms are owner controlled or manager controlled and use this to analyse attainment of black control and management.

In her earlier work, Means (1931:70) defines ownership as having economic interests that commit capital resources in a corporation or company with an expectation to maximise returns. The main criterion that Berle and Means used to assess the relationship between ownership and control was the percentage of shareholding owned by different individuals and groups in a company. Chapter Five explored shareholding of mining companies (white, foreign and black-owned) to understand shareholding that is under the control of blacks.

Control is having power to make important decisions on how the resources in the corporation are used. The question then becomes who have the power to make such decisions in a corporation. Berle and Means (1932:70) and Means (1931: 72) identified five major types of control; namely, almost complete ownership (when a firm owns 80 per cent shares); majority control (50 per cent); minority control (20-50 per cent), management control (5 per cent) and control through legal device without majority ownership. They continued to say that over time most corporations in the

USA had no controlling shareholders in terms of having 20 per cent shareholding and above. According to the Mining Charter, blacks can attain control by acquiring majority shareholding where blacks have 50+1 share and through joint ventures where blacks have 25+1 share. The first and the second are regarded as active owners. The Mining Charter however anticipates a situation which other shareholders to own up to 100 shares but might not participate in the decisions of the company or passive shareholders. Broad-based groups (communities and consortiums) might be passive shareholders.

Contemporary studies have focused on identifying whether Berle and Means' characteristics of management control are prevalent elsewhere (Blair 1995). The discussions have been around variables such as percentage of shareholding that allows control; composition of board, voting rights, board size, appointment of the board and performance of functions of the board. In contrast to Berle and Means' 20 per cent cut-off threshold for minority control, it was accepted that even a shareholding of between 5 and 10 per cent would allow owners to have control, provided no other shareholder(s) had similar or higher percentages (Mizruchi 2005:11). Leech (2002:18) put these levels at 4 to 25 per cent shareholding, provided there was no other shareholder who had a higher shareholding. Thus, for Cubbin and Leech (1983:351) and Salter (2003:40), a minority shareholder (a single individual shareholder or even institutional investor such as banks, insurance companies or pension funds) may have control in companies provided they have a larger shareholding than the rest or the remaining shares are held by widely dispersed shareholders who cannot change the voting outcome. In other words, the voting power of the largest shareholder becomes important in determining the power to control a firm.

Studies have also established that ownership control (and not management control) is strong in corporate structures where there is family ownership, block-holder ownership, cross ownership and pyramid structures (La Porta et al., 1999; Bebchuk, Kraakman; Trintis 2000; Holderness 2003; Belkhir 2005, Mohd et al., 2008; Dhaya, Dimitrov and McConnell 2009; Shah et al., 2011). Financial institutional

shareholders tend to have control in companies they fund in order to protect their investments (Belkhir2005:4; Mohd et al., 2008:100-101). Financial institutional shareholders include banks and non-banking institutions like pension funds, insurance companies, unit trusts and investment companies. In order for such institutions to participate in decision making of the companies that they fund they acquire controlling shares or ensure they have representation on the board. Bebchuk, Kraakman and Trintis (2000:295) mention structures that will by nature allow control to be concentrated; these are pyramid structures and cross ownership, but also the voting powers that shares carry. Where pyramid structures and cross ownership exist; a company may exercise control with a small fraction of equity ownership in a number of firms.

Control also depends on the voting rights that shares carry. The dual-class equity structures, allows ownership to be exchanged through a mixture of two types of shares: those that carry high voting rights (for example A-shares) and those that carry low or no voting rights (for example B shares). For example low-vote class of common stock may be entitled to one vote per share, and a high-vote class of common stock entitled to several votes per share. Generally companies that use a dual system trade low-voting shares to the public in the IPOs while offering founders and early investors, high-voting shares. The shareholders who hold low voting shares, have no or limited control in the affairs of the corporation (Glover and Thamodaran 2013:1-2).

Leech (2002:17-22) supports Berle and Means' thesis that in dispersed shareholding structure, control of a company does not lie in shareholders, but in the board of directors and senior managers. Thus, one major development in modern corporations is the emergence of institutions of hired professional directors and top managers who direct the operations of a corporation. The problem that may arise is who has the power to select directors. He continues to say that the decisive powers lie with the individuals or groups of shareholders who have more per cent of shareholding than others, or those who either are capable of mobilising the legal rights to choose them,

or those who are able to use their voting power to influence the choices Leech (2002:17-22).

Other critics like Baurmol (1959), Salter (2003), Daily, Dalton and Cannella (2003), Mizruchi (2005), Desender (2009) and Styn and Stainbank (2013) paid their attention on who at the firm level have the power to appoint the board of directors, the overall issues of corporate governance, the main functions of the board (both internal and external directors) and other variables that influence the structure of the board. The variables include not only the shareholding structure but also other endogenous attributes of the firm such as the constitution of the board, the size and age of firm, the voting rights that the shares carry and the laws and regulatory frameworks that guide issues of corporate governance in a country. It is not possible to discuss all these attributes here.

Desender (2009:11), Styn and Stainbank (2013:322) and Baurmol (1959) highlight how the composition of the board is important to explain control. The constitution is explained in terms of internal and external members of the board or executive and non-executive members. These may have different powers in major decisions of the company. Internal executive board members are directly linked to the company and are in many instances subordinate to the CEO. External board members (or independent directors) may be associates of the firm (suppliers, bankers, lawyers, accountants, trusted allies and simple friends) who have no direct association with the firm. The question then becomes who between the two groups is in a better position to make important decisions of the firm.

Salter (2003:40-41) says that it is the internal board members (and managers) who are in a better position to exert control over firms. This, according to Salter, is because the internal board members have specific knowledge that helps them to make strategic decisions better than external board members. However, Baurmol (1959) and Mizruchi (2005:4, 17) say that, although it is regarded that the internal directors and managers have the power to build or destroy firms, the external directors also exert control in the firms they serve in fear of tarnishing their

reputations and losing remunerations. Melinda and Ryan (2006:508) say that independent directors (or external directors) are likely to be free of conflict of interest, especially when ownership is dispersed. By contrast, when ownership is concentrated with cross shareholding and interlocking directorship, both internal and external directors may not be free of conflict of interests. This is because the two categories of directors all sit on the same board or may often meet in different boards that they serve and are likely to build a team-work. In such cases, the board members' ability to protect the interests of minority shareholders becomes questionable.

Lipton and Lorsch (1992); Patro and Zhao (2003); Boone et al., (2005); Audra et al., (2005) and He and Sommer (2006) looked at the size of the board. Audra et al., (2005) define board size as total number of directors on the board including the CEO and Chairman. The authors say that the size of the board is influenced by a number of factors. These factors include: a firm's geographical locations, the volume of activities, the age of the firm and changing nature of the firm's objectives. All these factors determine the composition of the board and their functions. For example, the bigger the firm, the more extensive is the firm's activities, the larger will be the board size. He and Sommer (2006:9) say the decisions to employ an extra board member depend on the expectations of internal and external; or executive and non-executive members on benefits a new member is likely to bring to the firm. Benefits include important knowledge to make successful mergers and acquisitions or prevent a merger and financial connections. If there no or few expected benefits, there will be less desire to add more new members. Who fills the vacancies on the board is therefore a product of negotiations between current directors and CEOs on what they expect from the new member.

Lipton and Lorsch (1992:65) looked at the trends in the growth of the board size in various countries. Their findings indicate that from the 1930s to the mid-2000s, board sizes of large corporations have not been expanding. In general, the board size reached a median of 11 in 1935, picked up to 15 in the 1960s and fell back to 11 by 2000. They continue to say that firms seem to prefer small sized boards (between

seven and ten). Beyond this size, it becomes difficult for a member to express ideas and some may even shirk attending meetings.

Control of organisations is also discussed on the basis of how board members carry their responsibilities. As Mizruchi (2005:26-27) says, being a member of the board or executive does not automatically give one the power to have control in the firm, as it depends on the extent to which one participates in the actual decision making processes. For example, how many times a member attends board meetings, gets involved in decision making forums, confronts the management about poor policy decisions, or makes other constructive contributions concerning company issues. Inadequate contribution and commitment will reduce the board member to rubber-stamping the suggestions made by other members and the CEO.

The discussions above are important to understand South Africa's corporate structure in general and explain the peculiarities of South Africa's corporate structure. Questions that the above discussions may help to explain are: Is it feasible to attain 40 per cent black representation in the directorship of white and foreign-owned companies (regardless of their shareholding in these companies) as demanded by the Mining Charter? Will blacks get enough voting power to gain control? Will the white and foreign-owned companies increase their board sizes just to accommodate blacks? Some of these questions are explored in the next section that discusses the past ownership and control structures in South Africa before moving to the study findings.

6.3 Past Corporate Ownership and Control Structures in South Africa

Corporate ownership and control in South Africa is different from the pattern that was identified by Berle and Means for the United States. Halse (1982), Barr and Kantor (1995), Kantor (1998), Malherbe and Segal (2001), Judin (2003) and Chabane et al., (2006) have all pointed to high concentrated ownership levels, pyramid structures, cross shareholding, family ownership, institutional ownership, interlocking directorship and the use of dual shareholding structure, in particular, low voting shares to be typical of South Africa's corporate structure.

Looking at the corporate structure in the post-apartheid South Africa, Kantor, (1998:70) says that like in the past most shareholders on the JSE are not active participants but are contented to receive dividends and capital gains with little or nothing to do in the companies in which they hold shares. By being inactive participants they delegate control to management. This case is similar to that of dispersed shareholding where firms are controlled by managers. Marherbe and Segal (2001:44-47), who also looked at the changes in the country's corporate structure by early 2000s, indicated that some elements of the old structure mentioned above still remain. Post-apartheid ownership transfers also use dual share structures. As we have seen in the analysis of BEE mining deals in Chapter Five of the study, the use of low voting (N-shares or B-shares) is still being used even in BEE transactions.

One has therefore to take into consideration the existing corporate structure in South Africa when discussing the call for black management and control of white and foreign-owned companies. The argument that there is a separation of ownership and control as stated by Berle and Means, may not strictly apply in the South African situation.

Thus, it is argued in this thesis that equity ownership determines control. The following two sections outline the study findings on the extent of black representation on the board and management of white and foreign-owned companies in the mining industry. This is done by exploring mining control variables (board characteristics) and management (characteristics). To capture this reality, the thesis has used the term "control what you own" in the next section below, in order to highlight the mining ownership variables and the mining control variables in order explain black representation in the boards of white, foreign and black-owned mine industries, respectively.

6.4 Control what you own: Are Blacks on the Mining Companies' Control Wheel?

The MPRDA is silent on issues of control and management. These are stated in the Mining Charter. Control is to be achieved through two ways; the first is through

active participation of shareholders. This is related to economic interests or equity ownership that blacks may acquire. The Charter states that a 50+1 vote gives the owner control of the company, in terms of appointing board members and management. Where blacks have a 25+1 vote (as in strategic joint venture or partnership) the black shareholder are expected to participate in the management of the company and have representation on the board. The second is the expectation of the Mining Charter that black representation on the boards and top management of all mining companies would have reached 40 per cent by 2014 irrespective of the size of shares owned by blacks. This appears under the affirmative employment requirement of the Charter. The original Charter called for 40 per cent HDSA participation at all levels of management within five years (Mining Charter 4.2). The Amended Mining Charter of 2010, and in particular the New Mining Score Card, specifically clarified this point by indicating that the 40 per cent HDSA is based on black representation on the board of directors (top management) and executive management (senior management) by 2014. It states that:

“In order to create conducive environment to ensure diversity as well as participation of HDSA at all decision making positions and core occupational categories in the mining industry, every mining company must achieve a minimum of 40 per cent HDSA demographic representation by 2014. This should include executive management (board) and senior management (EXCO).” (Amended Mining Charter section 2.4)

The Mining Score Card called for 10 per cent women participation in mining which includes representation on the board and senior management. It was necessary therefore for the study to explore black representation on the board of directors and senior management of mining companies. Blacks can also participate in equity shareholding as passive shareholders (without participating in management or having direct control of their assets) where they may own up to 100 per cent shares (see the Mining Charter, section 4.7). The call for 40 per cent black representation on the board of white and foreign-owned companies regardless their shareholding is expected to give blacks control of mining assets. The 40 per cent call for black management assumes the existence of management control in mining companies and the use of a regulatory framework that allows management to run companies on

behalf of shareholders. Berle and Means (1932:70) called this type of control as control through legal device.

It is important at this juncture to explain the existing ownership structures from the findings of this study and explain their direct impact on realisation of the demands of the Amended Mining Charter. This analysis is guided by mining control and management variables mentioned in Chapter Four section 4.5 and repeated here. Mining control variables include: percentage of shareholding; board characteristics (nationality, race, size, gender) and board composition (executive or non-executive); voting rights (preferred shares, common shares, none or low voting shares) and conditions of sales (lock-in clauses). Management variable include management characteristics (nationality, race, size, gender). Below I explain them in the context of the findings of this study.

Section 5.5 of this study provided a detailed account of mining assets, projects and percentage of shareholding that black-owned companies control in the mining industry. It is indicated in the section that the implementation of the MPRDA and the Mining Charter has resulted in the emergence of black-owned companies (those with 50+1 share). Such black-owned companies are likely to have higher black representation on the board and management of the companies that they invest in. There have also emerged black empowered companies (those with 25+1 share), these are expected to have some black representation on the board and management.

This section explores more on attributes that explain blacks' control of mining assets. The first includes the existence of family ownership which has remained part of the South African mining scene. Examples of companies with significant family ownership include Assore, which is controlled by the Sacco family through Oresteel Investments that own 52.43 per cent equity; Keaton Energy holdings where the family directors (the Salter and Glad) own 40 per cent equity; Wescoal Holdings in which family directors control 28 per cent equity and Platfields in which the family has 22.96 per cent equity. The Oppenheimer family, that controlled the diamond industry for almost 85 years through De Beers, sold their 40 per cent to Anglo

American in July 2012, remaining with around 5 per cent. This is an amount that falls in Leech's (2002:18) levels of 4 to 25 per cent shareholding (provided there is no other shareholder who has a higher shareholding), as explained earlier. It is interesting to note that even black-owned companies have joined this trend. The best examples are the African Rainbow Minerals and Exploration Investments (Pty) (ARM) and Shanduka Resources (subsidiary of Shanduka Holdings). ARM was founded by Patrice Motsepe. The Motsepe family controls 41.17 per cent of ARM (ARM 2011). Shanduka was founded by Cyril Ramaphosa, who is currently the Vice President of South Africa. Although it is understood that Cyril Ramaphosa has relinquished the chairmanship of his companies after going back to politics as a deputy president of the country, the Ramaphosa Family Trust still has a significant control. There are many black-owned companies like these in which the founders and families have significant shareholdings, allowing control assets as most have percentage thresholds that surpass those envisaged by Leech (4-25 per cent) and Berle and Means (20 per cent). Thus, South Africa's ownership structure is in line with Desender's (2009) contention that those with more shareholding have a better chance of controlling their enterprises.

The second attribute is foreign-owned companies' shareholding. This has grown after the lifting of sanctions against the apartheid regime and allowing of the external listing of the old conglomerates (see section of 2.2 of the thesis). The two major foreign-owned mining companies such as Anglo American and BHP Billiton all have external primary listings. Before the unbundling process, two companies were part of the local mining giants, now they have become foreign-owned companies and operate through local subsidiaries and holding companies. For example, Anglo American operates through Anglo Platinum, Anglo Coal and Kumba. The end of apartheid has also seen the return of companies such as Xstrata (known before as Sudelektra) that had gone abroad during the anti-apartheid economic sanctions. There has also been a host of completely new entrants, mostly junior mining companies. These, as noted in chapter five, have created local subsidiaries to which BEE partners have acquired shares. Foreign shareholding has also penetrated the local white companies. For example, 57 per cent of Gold Fields shares and Wits

Consolidated Resources shares are in foreign hands; 58 per cent of Harmony Gold mining shares are foreign and 44.7 per cent of Randgold and Exploration are held by foreign banks. (Harmony 2010 and Wits Consolidated Resources 2011). Irrespective of black representation on these companies, foreign ownership of mining companies takes control away from the local boards and CEOs as they cannot bypass decisions made by the main companies whose headquarters are base out of South Africa.

Foreign companies have in some instances taken over the black-owned companies in terms of shareholding and the management. The best example is Wesizwe, discussed in Chapter Five where a Chinese company has acquired 49 per cent shareholding and taken over the management of the company (Wesizwe: 2012). Northam has lost its BEE status because Mvelaphanda Resources has sold some of its shares to Eurasian Natural Resources. The critical factor is that blacks lack own funds and at times are unable to redeem even the shares allocated to them. This reduces their ability to acquire shareholding to affect control.

It is noted here that foreign-owned companies have shares in their BEE partner companies and shareholders. Chapter Five showed cases of Anglo American Plc in Exxaro and Anoorag and of Lonmin in Incwala. Thus foreign ownership is likely to have an impact on how black management and control is exercised, as decisions, in particular those pertaining to the allocation of firm resources, are likely to be made by foreign owners, leaving little room to blacks to control. This is the situation that in the past led to cross shareholding, as indicated in section 2.2 of this thesis.

The third attribute pertains to shareholding controlled by financial institutions. Financial institutions have high shareholding in mining companies. This is indicated by Laubscher (2011:2), an economist for the Sanlam Group, who said that, by 2010, 42 per cent of listed mining shares were owned by South African institutions. This is confirmed by this study which reveals that a number of companies in South Africa are under the control of financial institutions. These include: Impala Platinum, which (apart from shareholding by the Royal Bafokeng Holdings at 15 per cent equity) is almost wholly-owned by financial institutions. Banks own 40.1 per cent equity; pension funds have 15.4 per cent equity and insurance companies have 4.1 per cent

equity (Impala Platinum 2011). Likewise, Petmin's 39 per cent equity is owned by institutional shareholders who include PSG Palladin, Investec, Coro Capital, GEPP Equity, Metlife, Black Rock, Old Mutual, First Rand Bank, Sanlam and SBSA/Stanlib. Its management owns 19 per cent of equity with the remaining 28 per cent equity owned by a BEE consortium (Petmin 2010, 2011). Village Main's 91 per cent of equity is under financial institutions. The institutions include Umbono Financial Services with 46.52 per cent equity (Village Main 2010). Likewise, Trans Hex Group which, apart from its 20.3 per cent ownership by Northam (which took over from Mvelaphanda), is mainly controlled by financial institutions with 30 per cent equity. These include Nedbank, Standard, PIC, Old Mutual, Allan Gray and Investment Solutions (Trans Hex 2010, 2011). In Randgold and Exploration, foreign banks own 44.77 per cent equity; mutual funds 14.62 per cent equity and pension funds own 8.89 per cent equity (Randgold 2011). The last in this group is Simmer and Jack Minerals in which the banks own 37 per cent equity and mutual funds own 9 per cent equity (Simmer and Jack 2011). Financial Institutions are likely to influence the decisions of companies in which they have high shareholding.

The fourth attribute is the voting rights. These are rights that give a shareholder the right to vote on important matters of the corporation policy and choice of the board of directors. As indicated earlier BEE mining deals use low voting shares which are referred to as N-shares. N-shares are treated the same as ordinary shares in terms of dividend pay-out, even though, they are usually traded at a discount. Over time the JSE later declined to list companies with overwhelming N-shares or pyramid structures. This led to the diminishing use of N-shares from 16 per cent of the JSE in 1996 to 10 per cent in 2000. Most N-shares were converted into ordinary shares but the use of N-shares has not entirely been scrapped (Stayn and Stainbank 2013:323). Chapter Five showed the example of Gold Fields which concluded deals with Invictus under the N-share agreement. As a matter of fact, Invictus is a consortium which can be regarded as a passive shareholder, as N-shares limit the extent by which blacks attain control in the companies in Invictus. In discussing black representation on the board of directors and senior management of mining companies, one has to take into consideration all the factors above.

6.4.1 Black Representation on the Board of Directors

Data collected for the analysis of this section is based on companies in the sample of 72 companies used for the study. Data on mining control variables was collected for 21 foreign companies, 18 white companies and 9 BEE enterprises (or black-owned companies). A total of 468 board members were identified and classified into: executives and non-executives directors; white and black males and white and black females).

The findings on black representation on the board of mining companies are presented in Table 6.1 below, which shows board membership in white, foreign and BEE companies. It divides members of the board into executive and non-executive and then classifies them into: white males, white females, black males and black females.

Table 6.1: Board Membership in Mining Companies

Type of Company	Executives		BM	BF	Total	Non—Ex	Executive		BF	Total	Total
	WM	WF			Executive	WM	WF	BM		Non-Ex	Board
Foreign	45	0	5	0	50	111	4	29	5	148	198
White	34	9	8	2	53	59	7	36	9	111	164
BEE	16	4	17	5	42	21	8	26	9	64	106
Total	95	13	30	7	145	191	19	91	23	323	468

KEY: WM= White Male, WF= White Female, BM= Black Male, BF =Black Female

Source: Compiled from Various Mining Companies' Annual Reports.

There are differences of size (number and percentage) between the three categories of foreign, white and BEE companies. Within the foreign-owned companies, the percentage of blacks on the board is equivalent to 19.6 per cent. This falls to 10 per cent if one looks at only executive membership. This is because most foreign-owned companies had only 1 or 2 executive directors in the country. The board size for foreign companies was between 8 and 13, with the exceptions being Central Rand Gold (4) and Jubilee Platinum (5). Black board members were concentrated in Lonmin (5), Coal of Africa (8), Gold One International (7) and DRDGOLD (6).

The board size of white-owned companies ranged from 6 to 15. Black representation on the board of white companies stood at 31.1 per cent overall, but fell to 18.8 per cent on executive board membership. Black executive board membership is concentrated in one company, Keaton Energy, which has 4 out of the 10 executive members. Non-executive board membership is also concentrated in three companies – Impala Platinum (6), Harmony (5) and Gold Fields (5). Blacks own 15 per cent equity in each of these companies. This questions how much such companies may accommodate a 40 per cent black representation as required by the Charter.

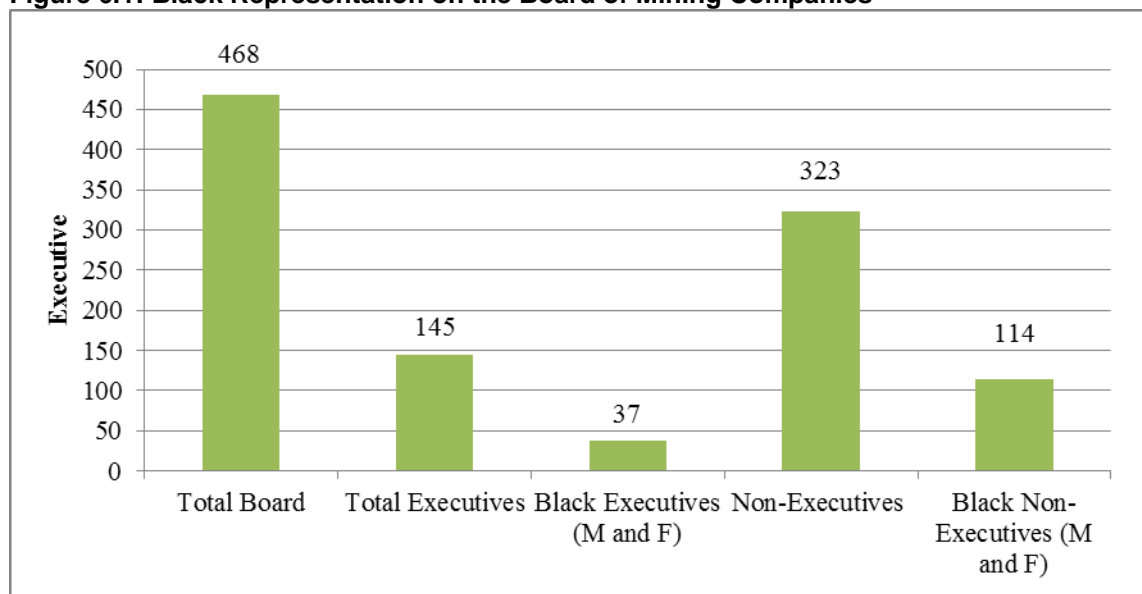
The picture is different in the size boards of black-owned companies. Black representation on the board of black-owned companies accounts for 53.7 per cent (57 out of 106). Again, this is an indication that there is a direct link between ownership and control as the control what you own pattern reveals itself here. Board size ranged between 8 and 13. The exception is ARM with 17 board members and a top management steering committee of 24 members. The possible explanations for this large size may have to do with the need to have representation from the diverse mining operations that the company has, as this is the most diversified black mining company. Second, it may be that ARM is also a lead partner of other consortiums and that it has to take on board other members of the various consortiums that it partners with. Nevertheless, there is still a very high white presence on the boards of black companies (46.3). This is because both foreign and white companies have shares in the black-owned companies as indicated earlier.

Black women representation on the board of mining companies is limited. In the case of foreign companies, women (both white and black) accounted for only 4.5 per cent. All these are in non-executive positions. In the case of white companies, women representation accounts for 16.4 per cent. Black women representation is just 6.7 per cent. There is, however, a good representation of women as executive directors (20.7 per cent), but most of them are white women. Women representation on the board of BEE companies stands at 24.5 per cent, with black women representation standing at 13.2 per cent. More women on the board of BEE companies can be explained by the

fact that women groups form part of the consortiums that have become shareholders of these companies. In other words, women are also shareholders in BEE companies.

Figure 6.1 provides a combined picture of the size of black representation on the boards of all mining companies (white, foreign and black-owned companies). Blacks accounted for 32.3 per cent (151 out of 468) of all board members. When this is broken into executive and non-executive board members, black representation was 25.5 per cent (37 out 145) for executives 35.29 per cent (114 out of 323) for non-executives.

Figure 6.1: Black Representation on the Board of Mining Companies



Source: Compiled from Various Mining Companies' Annual Reports.

Key: M= Males; F=Female

Two things need to be stated here. First, the impact of control in firms depends on board members' attendance of board meetings. This was indicated by Mizruchi (2005:26-27) who stated that unless a board member participates in the board meetings, he/she would have no impact on the board decisions. In light of this, the study paid attention to another variable of control; the attendance of board members. Almost all company annual reports reviewed had a special section on board attendance, and these indicated that board members attended meetings. There is an indication from the reports that black board members participate in decision making.

The second is the board size for mining companies. The average board size is ten people, with the lowest end standing at six members and the highest end at 15 members. This is line with He and Sommer (2006:9) who put global average board size standing at 11 members. The percentages demanded by the Charter seem to be a one-size-fits-all approach where every company is expected to achieve 40 per cent black representation. It is not surprising therefore, that black representation is low, and as some white and foreign-owned companies have small sized boards. The small size of boards may limit the chances of mining companies to expand numbers of black directors.

6.4.2 Blacks in the Top Management of Mining Companies

While there was almost complete data on the board of directors for the companies in the study sample, data on top management was limited. Data was available for only 11 of the foreign-owned companies, 8 of the white-owned companies and 6 BEE Enterprises. A total of 226 members of top management were identified. These were then grouped into gender and race (white males, white females, black males and black females) and size. This is summarized in Table 6.2.

Table 6.2: Top Management of Mining Companies

Type of Company	Top Management				Total
	WM	WF	BM	BF	
Foreign	78	1	14	4	97
White	57	1	12	3	73
BEE	31	5	15	5	56
Total	166	7	41	12	226

Source: Compiled from Various Mining Companies' Annual Reports.

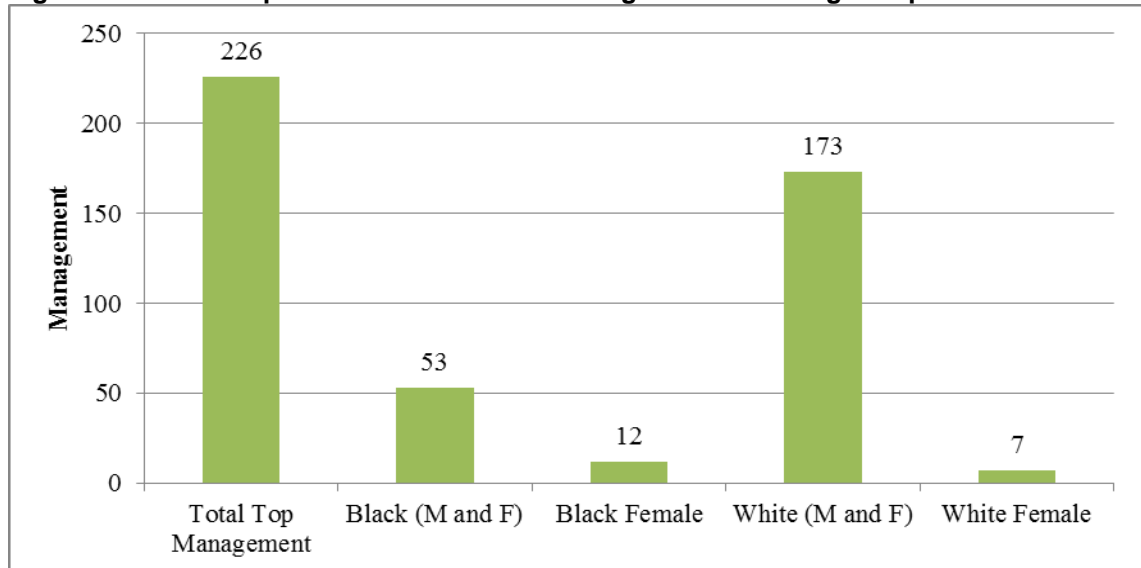
KEY: WM= White Male, WF= White Female, BM= Black Male, BF =Black Female

According to table 6.2, blacks in the top management of foreign companies represented 18.5 per cent (18 out of 97). Anglo American Plc hired most of the black managers. This was concentrated in two of its subsidiaries; Kumba (4) and Anglo Platinum (5) and its joint subsidiary with Rio Tinto – Palabora Mining (4). The three accounted for 72 per cent (13 out of 18) of all blacks in top management of foreign

companies. Women (1 white woman and 4 black women out of 97 in the group) in the top management of foreign companies represented 5.2 per cent.

The size of black representation in the top management of white-owned companies was 20.5 per cent (15 out of 73). Women representation was 5.4 per cent (1 white woman and 3 black women). This representation was only in 2 companies, Impala Platinum (2) and Harmony (2). Women representation in top management is in sharp contrast to women representation on the board, which stood at 16.4 per cent and there are more blacks (12) than white (7). There are still some white companies without black people in top management (Assore, Petmin and Simmer and Jack). This is an indication that such companies have not responded to the call of having blacks as part of management.

Black representation in the top management of BEE companies stood at 35.7 per cent (20 out of 56). This contrasts sharply with the 53.7 representation on the board of black companies. Women representation at the top management of these companies stood at 17.8 per cent (equally divided between black and white (5 for each). Again, this is in sharp contrast to the 24.7 per cent women representation on the board of BEE companies indicated earlier. Overall, white (male and female) representation on top management stands at 76.54 per-cent (173 out of 226), while blacks (women and men) constitute 23.45 per cent (53 out of 226). Women accounted for only 8.4 per cent (12 blacks and 7 whites). Thus, black women represented only 5.3 per cent. This is depicted in figure 6.2.

Figure 6.2: Black Representation in Senior Management of Mining Companies

Source: Compiled from Various Mining Companies' Annual Reports. Key: M= Males; F=Female

The above analysis shows that black representation in management in white-owned companies is limited and there are still companies without black people in top management. From the interviews that were conducted by this study, part of the explanation can be found in the limited number of qualified and experienced black managers coupled with the continued suspicion of their perceived inability to provide leadership. Finding the reasons for such tendencies is however beyond the scope of this study.

The analysis of the data above gives only an indicative pattern of what is happening at this level. The pattern is almost similar to that of the black representation in board membership discussed above.

6.5 Conclusion

The aim of this chapter has been to establish the extent to which blacks have attained management and control in the mining industry. Three conclusions are made in this chapter. The first is that, although the study started from the premise of Berle and Means' separation of ownership and control, it has been shown that their theory has limited application to South Africa with its history of high levels of ownership concentration, cross shareholding, financial institutions, family shareholders and the

use of low voting shares. Despite the unbundling, this study found out that some of the elements of the old shareholding structures still remain. Thus, financial institutions control over 40 per cent of JSE mining equity. There is also the existence of family ownership even within black-owned enterprises. For example, 40 per cent of the shareholding of ARM, a black-owned company, is by the Motsepe family. Such high percentage thresholds under the family simply indicate that the Motsepe family has a better chance to appoint directors and hence have more influence on controlling the affairs of their enterprises.

Second, as argued in this study, the ownership structure determines control. This corroborates the 'control what you own' pattern explained earlier. It follows that larger shareholders have a greater number of board members and top management officials. Thus, white and foreign-owned companies have more white and foreign directors, respectively. This should not be surprising, given the small size of black equity in these companies. There is higher black representation in the BEE companies (where blacks have a 50 +1). Black representation is only likely to grow with the growth of black shareholding.

Thirdly, it is apparent from the findings from this chapter that black representation in the white and foreign-owned companies remains low, and in some instances it does not even exist. This puts into question the possibility of achieving a 40 per cent black representation on the boards and senior management of white and foreign companies.

7 B-BBEE Policy Compliance in the Mining Industry: Problems and Issues

7.1 Introduction

This chapter addresses the fourth and fifth objectives of this study. The fourth objective seeks to establish the forces that facilitate or hinder the B-BBEE policy implementation process in the mining industry. Since the B-BBEE policy forms the core of the government's intervention programme in its free market economy, the fifth objective seeks to establish the government's role in the implementation process. To answer these objectives, interviews with the executives of white, foreign and black-owned mining companies and officials at the DMR, a government department that was responsible for formulating the MPRDA and the Mining Charter where conducted. Three sets of interview questions were used for these interviews: for the executives of white and foreign-owned companies; for executives of black-owned companies and; for the DMR officials (Appendices 10.4, 10.5 and 10.6). The names of people interviewed, their affiliations and the dates when they were interviewed is provided in Appendix 10.7

The interview questions were grouped into six themes: Licensing of Mining Companies; B.BBEE policy compliance; Business partnership; BEE funding; the role of government in the implementation of the B-BBEE policy and the future of the B-BBEE policy (see section 4.4.2.2 for the details on the themes). What follows is the analysis of the responses obtained from the interviews. Given the nature of the responses, the analysis quotes reports verbatim, rather than giving percentages.

7.2 Licensing of the Mining Companies

Executives of white and foreign- owned companies were asked to indicate whether or not they had converted all their old-order rights and acquired new licenses (Question 4). They were also asked to indicate the problems encountered in the process of obtaining licenses (Q5). BEE company executives were asked to indicate

any problems faced in obtaining licences (Q3) and to share experiences on access to land for which licences and access to geological information had been obtained (Q4).

The DMR officials were asked for records of licenses granted to white, foreign and black-owned companies since 2004 (Q1.1); to indicate whether any white or foreign-owned company had been denied a licence because of not having black partners (Q1.2); to indicate problems experienced in the licensing process (Q1.3); to comment on the practice of blacks selling their prospecting and exploration licences to white and foreign companies (Q1.4) and; to indicate what type of assistance if any was given to black companies in accessing land for which they had obtained licenses, in accessing relevant geological data and any other supports (Q2).

White and foreign-owned companies' executives interviewed indicated that they had already converted their old-order rights to new-order rights and acquired new licences for new operations. The main problems raised by the company executives with regard to the licensing process were: delays in the processing of licenses; incompetence of the DMR staff while issuing the licenses; corruption; lack of fairness in the conversion process and; lack of coordination between the government departments that are associated with the licensing process.

All the executives with the exception of Mr Lewis (Northam) and Mr Briggs and Mr Mashego-Mashego (Harmony) indicated that there were delays in the processing of licenses. Such delays tend to increase costs and put a company's decisions in limbo. Mr Mahomed Sedat (BHP Billiton) gave an example of how delays in providing a license to his company's iron ore projects in Brazil partly caused by land access problems raised overall costs of production to over US\$2billion a year. He could not, however, provide a direct example for the company's South African operations. These delays, according to Mr Mashego-Mashego (Harmony), are caused by the mining companies' resorting to employing consultants to manage applications submitted to the DMR while the DMR and other government departments prefer direct contact with the mining companies. He stated:

“We did not experience problems with licensing with our deal with ARM because of the status of Patrice Motsepe who has close relationship with the government.”

The implication is that the manner in which a company chooses who should be its black partner is related to the ability of that partner to handle relations with the government and the benefits that can be obtained. As also shown, the applications from those companies that have connections with well-connected blacks are treated with urgency. This points out to two sides of the story on who initiates cronyism. On the one hand, the ANC itself wants to install and anoint its own people and, on the other hand, the white and foreign-owned companies also hunt for well politically connected black people. In that case the two groups benefit.

Another common complaint by executives of white and foreign-owned companies concerns the incompetence of the DMR staff in the processing of license applications. Both Mr Mark Cutifani (AngloGold Ashanti) and Mr Sedat (BHP Billiton) complained that the staffs at DMR were responsible for many mistakes in the issuing of licenses. Common mistakes included mismatch of demarcations of mining areas and wrong or missing mining codes. The executives suggested that the DMR should deploy extra human resources to cut down on delays and train its workers to minimise unnecessary mistakes in the issuing of licenses.

Most of executives indicated the existence of corrupt practices at the DMR during the licensing process but none was prepared to provide explicit examples of corrupt practices or mention those involved. This indicates the difficulties that a researcher may experience in obtaining data on issues of corruption.

Responding to the charge of unfair and unethical practice Mr Mahomed Sedat (BHP Billiton) said that his company had difficulties in converting some of its old-order rights in coal to new-order rights. He said that the company had expected to convert all of the licenses on the basis of the ‘continuing consequences principle and offsets’ that is allowed by the Mining Charter and that recognize previous deals. Sedat also noted that his company helped in the creation of BEE companies, some in partnership with Anglo American Plc (Eyesizwe and Exxaro) and sold coal assets to

black-owned companies. Mr Sedat said, while Anglo American Plc was allowed to convert its old-order licenses using the same principle, BHP Billiton's licences were not allowed to do the same. Sedat regarded his company's failure to convert some of its old-order rights to new order rights as application of double standards by the DMR.

There was also a complaint by white and foreign-owned companies on the lack of coordination between government departments dealing with the mining companies. For example, Paul Dunne (Impala Platinum) insisted that his company had no problems with the DMR, but found it tedious to go through various government departments: Water Affairs for water licences, Environmental Affairs for environmental approval and Labour for social labour plans. He suggested the establishment of a 'one stop shop' for all the necessary approvals related to mining.

The BEE companies executives also pointed to: the existence of long delays in processing numerous documents needed for license applications; the incompetence of the DMR staff and; and the long and tiresome negotiations with land owners (including communities) for land access. Mr Carl Kekana (Mmakau Mining⁹⁷) complained that it took considerable time (no exact time was mentioned) for the DMR to issue the licenses. The respondent at African Spirit Holdings (name and job title withheld) was much more specific and indicated that he had to wait 12 months for an answer to some of the applications. In relation to the incompetence of DMR staff, Mr Mike Tekere (Optimum Coal) and Mr Mangisi Gule (ARM Coal) complained that there were at times gross mistakes in the form of mismatch of mining codes and incorrect demarcations. This caused a lot of inconveniences and further delays.

Mr Sipho Mofokeng (Mvelapanda Resources) and Mr Clyde Johnson (Sedibeng Mining) responding to any assistance given to black companies in accessing land, they both explained that, before licenses are issued, the applicant has to show that the

⁹⁷ After a more than six months wait for an interview, the office of Bridget Radebe (chairwoman of Makau referred me to the CEO Carl Kekana.

company has access to the land for which a license was being applied for. This in practice meant showing proof that access to the land will not be a problem and thus negotiations on land access have to be completed before the license related to the particular area is issued. Mr Clyde Johnson said, white farmers demand payments. Although no actual estimates were given, he indicated that it was “huge sums of money.” He continued to say: “For tribal or communal land there are always long negotiations with the leaders and members of the communities. At times the negotiations involve the relocation of current settlers which are not only time consuming but also costly and has often led to delays in operationalizing mine projects.”

It should be noted, however, that BEE companies that simply became partners of white companies or those that acquired mining operations or projects straight from existing white-owned companies had no land access problems, because land ownership rights or agreements were already in place. This was pointed out by Carl Kekana (Mmakau Mining), Bongani Mashishu (BSC Resources) and the respondent of African Spirit Holdings.

From informal conversations with small scale miners at the symposium organized by the Limpopo Government Department of Treasury on the 11th of November 2011, executives from three companies that attended the conference (names withheld) said that it took almost three years of negotiations with the communities to gain access to land where mineral deposits were. One of the respondents indicated that the process involved the signing of many consent forms. One of the executives and her team showed their anger on lack of transparent in accessing land. The executive said:

“We are wondering how flashy ladies from Gauteng got access to the mines that were just next to our homesteads and under our chieftainship while we have been talking to the local authorities about our intention to mine coal there for years.”

Problems of land access to blacks boil to imbalances of land ownership created during the time of apartheid. This still disadvantages blacks. There are three types of land ownership in South Africa: Private ownership which in most cases involves

white farmers, tribal or communal ownership in which the land is controlled by the tribal leaders or the community and state owned land. It would have been fair for this study to explore more on views of these land owners in order to reveal what kind of problems land owners also experienced in allowing blacks to access land. This was not done in this study because of time and space, a limitation that is acknowledged here.

Executives from BEE companies were also asked about access to geological information and other relevant mining data. All the BEE company executives with the exception of BSC Resources indicated that they purchased such data from the Council for Geosciences. Experience of collecting data for this study indicates that it takes time and money to get data. The Council for Geosciences was approached for an up-to-date map on active mines in 2010 but only received a response in 2012 from Ms Mashudu Matshiva, a person dealing with geological survey data, who said that the map was only available in electronic format in larger scales. The process of printing them in readable format was not complete. BEE companies resort to purchase such data from other exploration and mining companies. This was indicated by Mr Lazarus (the CEO of Sephaku Holdings) and Mr Rowan Smith (Shanduka Resources). The respondent at Africa Spirit Holdings and Mr Carl Kekana (CEO Mmakau Mining) said they had to employ independent geologists. Dr Paul Jourdan, an independent analyst and former CEO of MINTEK had a different story; he said in the mining for change conference (6-7 September, 2010 in Sandton) that white and foreign-owned companies obtained geological data from government offices in South Africa cheaply and used their experts to change some facts and sell the data at a price, a trade that has been going on for some time.

Black executives indicated that they lack expertise in the mining field and cannot get important data that is crucial in making decisions in the investments they join. It is only Mr Bongani Mashishu (BSC Resources) who indicated that he and other company founders are mineral resources experts who had previously worked in the mining sector and therefore had in-house expertise.

At the DMR, apart from seeking answers to questions Q1.1, Q1.2, Q1.3, Q1.4 and Q2), It was also important to seek data on mining licences approved especially from 2004 when the MPRDA and Mining Charter became official, and clarity on issues raised by executives of mining companies such as delays in the issuing of licenses, mistakes in some of the licenses issued and the possibility of creating a ‘one stop shop’ where all BEE mining issues and problems were to be dealt with.

Mr Tladi, who provided data on licences (used in table 5.1 of the thesis), could not ascertain whether any white and foreign-owned companies had been refused any licenses because of lack of BEE partners (question Q1.1). When the case of BHP Billiton not converting all its old-order rights in coal was mentioned, Mr Tladi said that the BHP Billiton’s case was well known at the DMR office and was a complicated case that would require more background information for someone to understand. He was not prepared to explain more on the case.

Question 1.4 sought to get an answer on why BEE companies are selling their prospecting and exploration licenses to white and foreign-owned companies instead of participating in the extraction (actual mining) activities themselves? Mr Tladi (DMR) said that the Department was aware of such activities as any transferring of licences has to be approved by the Department. He continued to say that, when the selling of licences takes place, the common reason advanced by black-owned companies was the limited financial capacity to engage in the mining extraction activities. For him, the DMR has not yet decided on how to deal with the re-sale of licences by BEE companies. It was necessary to probe further on the re-selling of licences.

Mr Knobe, a lecturer at the University of Pretoria, was approached for more insights on selling licences. He said that the practice of selling licenses related to mine projects was a common practice by mining companies in South Africa. A mining company may develop a project and then sell in order to raise capital needed for other projects or just to make profits. Mr Knobe compared this practice of selling

licences to a property developer getting land, sub- dividing it and re-selling it. He said that such strategies could be utilised by BEE companies as well.

Commenting on assistance given by the government or any other public institutions to BEE mining companies, both Mr Tladi and another respondent at the DMR who wished to remain anonymous both indicated that the DMR was involved in giving clarity on policy issues. The anonymous respondent also said that it did not help aspiring BEE mining companies with practical issues such as access to land or geological data, or finding partners. He gave an example of land issues. These fall under the competency of the Department of Rural Development and Land Reforms and he in particular insisted that the mining companies (including BEE companies) had to negotiate with local authorities or private farmers on their own. Mr Tladi in particular stated that:

“It is their land and the central government has little to do with it. The private property principles must be upheld. Local chiefs or village headmen or private individuals know all the negotiations that go with mining companies with regard to land. BEE companies have to cope within the existing land market structures.”

He further said that the Department was aware of cases where some villagers had complained about how their chiefs negotiated secretly with the mining companies who mined in the areas under the chiefs’ control and obtained money (huge sums) and other perks and gifts like cars, and are offered contracts for catering and cleaning services at the mines. He also said that there were also cases of chiefs using intimidation when communities refused to accept long-term land leases or made inquiries about benefits obtained from mining deals. He then continued to say:

“Although these issues are discussed in different caucuses of the Department, so far no mining license applicant has raised alarming land issues with the Department.”

It seems that what he said in his first statement involved corruption on the part of the chiefs. It also appeared that he was going to call for government action to be taken against the chiefs in order to protect the people from the corruption engaged in by the

chiefs. These conducts by the chiefs should raise concern from the national government.

Mr Tladi indicated that no help was extended to the BEE companies in obtaining geological and other relevant mining information. He noted that BEE companies can obtain such information from the Council for Geoscience, normally at a fee.

The delays in the issuing of licenses as noted by the executives of mining companies was caused by two factors according to Mr Tladi: The lack of personnel both at the departmental level (headquarters) and regional offices to carry out the necessary functions such as expeditious inspections and; The failure of the submitted applications to meet all the requirements for the licenses leading to demands for resubmission of applications. He explained that before approving of any mining licenses, officials at the Department were obligated to physically inspect the locations for which licenses had been applied and ensure that they corresponded to the descriptions presented in the licence application documents and that the mine codes were correct and in line with the rules and regulations operating in the industry. He continued to say that at the beginning of the licensing conversion process, applications were received in large numbers (over 50 applications a month) and it was not easy for a few people in the department to service all the locations in any given month. Long delays could therefore not be avoided. The mistakes in the licenses were because of limited personnel and pressure to complete the licensing process and even the mining companies not indicating their demarcations properly.

Responding to the suggestion of having a ‘one stop shop’ put forward by Mr Paul Dunne (Impala Platinum) Mr Tladi said that it was impossible for two basic reasons: First, the DMR lacked enough personnel and financial capacity to deal with all the related issues. Second, other matters fall within the competency of other government departments such as the DTI (for investment promotion), Department of Finance (for costs of government personnel), Department of Rural Development and Land Reforms (for land issues) and others. Mr Tladi noted that one should not expect the

DMR to handle functions performed by other departments as it would be a duplication of functions.

7.3 B-BBEE Policy Compliance

To address compliance by white and foreign-owned companies on equity ownership, control and management transfer to blacks in the mining industry, three issues were raised here with the executives of the white and foreign-owned mining companies. First, was on equity and executives were asked whether their companies had reached the 15 per cent ownership target in 2009 and whether they were likely to meet the 26 per cent targets in 2014 (Q8.1 and 8.3). The executives were also asked to indicate how they calculated the compliance levels (8.2). Second, was on management and executives were asked whether their companies had attained the 40 per cent black representation on the board of directors and senior management (Q8.4). Third, the executives were asked to indicate the obstacles encountered in meeting the targets (Q8.5, 8.6, 8.7). The DMR was asked to explain the disparity between its equity compliance figures with those of the mining companies (Q3.1), to provide reasons for low BEE compliance (Q3.3, 3.4) and to indicate measures put in place to enforce and improve compliance (Q3.5).

All the white and foreign-owned companies' executives interviewed indicated that they had already reached the 15 per cent HDSA ownership target for 2009 and were sure that they would reach the 26 per cent target in 2014. As for how they calculated the 15 per cent equity target, Chris Griffith (Anglo American), Paul Dunne (Impala Platinum) and Holland (Harmony) all said that one had to check the kind of the deal and what it sought to achieve. The executives mentioned mining deals involving among other things: equity transfer (which took various forms including the sale of shares/equity); the donation of free shares; the selling of mine ventures or projects and entering into joint ventures. There were no details on how they reached the 15 per cent equity figure. To answer this question one needs to look at the history of compliance at an individual company and to trace the changes in equity ownership that have taken place. Mr Chris Griffith (Anglo American) said that "One had to look at what had already been done in terms of shares offered and what percentage was

actually purchased. These were complex issues and needed a lot of research work from our side before a proper answer can be given.”

The disparities in compliance levels arise because of the complexities of estimating the targets. Mr Hollard (Gold Fields) said that the methods used in the estimations of the targets might differ from one deal to another because it depended on the methods used in evaluating the assets where the deal was concluded. He also said that a deal might be concluded at a mine level, at a subsidiary level or at the main company level. He also noted that such issues were complex. At such situations I felt vulnerable to information asymmetry that existed between me and experts in the field and wished I had more time to go deep on such issues. Mr Hollard (Gold Fields) further said:

“When it comes to calculating equity targets, the government’s focus (is) on equity transferred to blacks (and) ignores the costs incurred by the company in terms of helping to create BEE companies and other transaction costs such as administration of the communities and groups that have to be partners and other requirements, giving them loans and guaranteeing them with financial institutions.”

Mr Hollard insisted that some of these costs could not be easily translated in monetary terms as part of the equity value. He said:

“For the government, what matters is equity transferred. What about other requirements of the Charter that we meet? To a miner, calculations of deal value are not a worrisome issue, but whether the buyer fulfils the funding obligations. What about if buyers do not pay for their shares or sell shares? When a BEE partner sells or is liquidated, technically all the calculations have no meaning since it causes BEE equity ownership dilution. The government needs to remember such issues and not to punish compliant companies to look for another BEE partner to compensate for the dilution that occurred. This leads to seeking more resilient and competent BEE companies as partners.”⁹⁸

What he argued for corresponded to Mr Cory (Assore) who had said that his company had to cover increasing transaction costs in the process of transferring shares to communities. These included communication and hosting meetings and

⁹⁸ When I asked for further clarifications, he mentioned a case of Mvelapanda Resources when it sold its shares in Gold Fields; the company had to look for another BEE partner to offset equity points lost.

transport costs. Mr Cory said that it takes time and commitment of company resources that apparently some of the costs were hard to quantify and were not considered to be part of the value of equity transferred to blacks. He further noted that the government considers only the value of shares or mining ventures sold to black-owned companies and does not take into consideration the fact that those who transfer assets incur costs in organising BEE deals and also meet other requirements of the Mining Charter.

What Mr Cory said in terms of costs in organising deals made me remember Telecom, MTN, SASOL and South African Breweries (SARB) at the time these companies offered BEE shares. In order to attract black shareholders the companies advertised widely in the media and the post offices in the country were used as points of purchase for the shares for easy accessibility to the mass of people who wanted. Shares in mining companies are mostly sold at the JSE (for those mining companies listed). It seems from what the executives are saying here is that they get problems in attracting or getting hold of prospective black beneficiaries.

Informal discussions were made with Mr Musa Budeda, a PHD candidate in the Department of Mine Engineering who is familiar with the estimation of mining assets. Mr Budeda said that there are different ways of mine asset estimations. At the mine level, estimations are based on mine reserves (that need to be up-dated regularly as extraction activities proceed). Estimations are also based on the latest life span of the mine. At a company level estimations use company asset value (a company may have diverse assets). For those companies that are listed in a stock market, market capitalisation can be used. Mr Budeda suggested that governments in mineral rich countries should use multi-disciplinary experts to estimate the mineral assets if they want to negotiate mining deals with multinational or large mining companies.

Responding to the question of what helped the white and foreign-owned companies to meet the equity targets (by 2009), Mr Mahomed Sadat (BHP Billiton) said that the company succeeded because it had numerous BEE shareholders that added up to

above compliance levels. Mr Cory (Assore) indicated the success of the company was because it had few, but strong partners such ARM and Shanduka. Mr Paul Dunne (Impala Platinum) indicated that his company had diligently chosen partners who were resilient and had cultivated lasting business relationships. He meant in particular its relationship with the Royal Bafokeng Resources which had become a large BEE company. For Paul Dunne what matters is to have partners ready to stay in business and sustain their shareholding. For Mr Graham Briggs (Harmony) and Ms Juanita Meijssen (Total Coal), successful compliance was because they had made deals with partners who were already active in the sector.

All the interviewed executives from white and foreign-owned companies did not explicitly answer the question on attaining the management and control targets of 40 per cent black representation on the board and senior management. The evasiveness is shown in Mr Johan Dippenaar (Petrus Diamonds) statement:

“One cannot just wake up in the morning and say I am going to have this percentage of blacks in my management. It is a process that depends on growth and other needs of the company. After all, this is a new requirement that was added around 2010.”

Although he did not elaborate, what he was talking about is related to the determinants of the board size which, as indicated earlier, depends on many other factors (see section 6.3 of this thesis on the discussions by He and Sommer (2006:9) and Leech (2003:17-22)). It is these factors that will determine how many blacks can be taken on as board members or top managers.

The discrepancy between the compliance level figures of the DMR and the Chamber of Mines is according to the official at the DMR who works in the office concerned with special studies (name withheld) caused by the Chamber of Mines. Whenever the DMR wants to do its compliance calculations, it asks for statistics from the Chamber of Mines. Using the same statistics, the Chamber gets different percentages and the DMR gets different percentages. When the Chamber is asked about the differences, it does not provide any good explanation. The explanation for the low compliance with respect to equity transfer boils down to reluctance to comply. The DMR official said:

“There is reluctance on the part of white and foreign-owned companies to take on board BEE companies as business partners. This is basically because blacks do not have financial back up and hence are unable to buy stocks, hire labour, purchase machinery or make contributions to mine rehabilitation. They refuse to enter into partnership with BEE companies.”

The official continued to say that one needed to take into consideration the fact that mining companies thrived for profit maximisation and that this prevented them from accommodating BEE partners. The respondent further stated that:

“Historically, old mining companies have been used to having the whole cake for themselves. They still want to hold onto the control of their mining assets and do not want to share it with the new comers especially the black companies. This is natural and is compared to a family situation where the only few children in the family were used to having all things to themselves and suddenly a new batch of children is supposed to be accommodated. The resistance to share with new comers will always occur and as a parent you have to balance the different interests.”

The official's views were conflicting. While first acknowledging the limitations that blacks face in exploiting opportunities offered by the policy, he still supported the profit motives of white and foreign-owned companies. But profit maximisation is a motive of any firm in a free market except for non-profit entities. It would be logical for the official to associate low compliance with the main limitations that blacks face, including not having capital to exploit opportunities in the industry and lack of direct government support. When asked about his personal opinion on debts that black-owned companies face and the low compliance levels reached in the midst of increasing value of mining assets and whether the equity targets should be increased, the official said that:

“I am aware that most BEE companies are still in debt and some have even been liquidated but there is no government strategy to resolve this. On my personal view, the government was actually too ambitious to start with 15 per cent. I think may be the starting point would have been like 5 per cent. Then, we would have seen how compliance behaved at that level and how it could go up from there. The 15 per cent in five years was rather ambitious.”

The above statement is a suggestion from the official that the government should revisit its current equity target levels and devise a better way of making blacks

participate more as owners in a situation where mining assets had expanded. There was, however, no further explanation given on the better ways to meet the targets, apart from lowering targets. One wonders whether the solution lay in the lowering of equity targets or in increased funding and other supports to the BEE companies.

Responding on the low compliance with management and control targets of the Mining Charter, the same official stated that:

“Equity and control go hand in hand because the equity owners want an assurance that their assets are being well managed. As long as the black equity is low, there is likely to be less management and control by blacks.”

The official further said that it was difficult for the government to actually ascertain if black board members and senior executives participated in the decision making process in the white and foreign-owned companies. This was because managers become part of the companies they serve and received attractive packages that ensured loyalty. The managers were unlikely to reveal what was taking place within these companies in terms of their actual involvement. He insisted that the government had no control of such matters.

Responding to the question on measures that the DMR had put in place to enforce compliance, the official said that, the first job of the government was to ensure that policies were put in place. The actual enforcement of compliance was a continuous exercise. There were many instances where the government had directly confronted those companies that did not comply on issues of equity, better housing for the miners and negative impact of mining activities on communities. He gave an example of how Gold Fields’ BEE partner, Mvelapanda Resources, sold its shares. He said that the government had to sit with Gold Fields to reach an agreement with them to find new BEE partners (resulting in the Invictus BEE deal at South Deep).

7.4 BEE Business Partnership

BEE business partnership is discussed separately because of its importance. Executives of white and foreign-owned companies were asked whether they had to

get a BEE partner for every mining operation (Q6.1); what attracted them to their BEE partners (Q6.2) and what problems they experienced with their BEE business partners (Q6.3). Executives from BEE companies were also asked to indicate their various partners (Q5); what attracted them to their partners (Q6) and to indicate problems experienced in the partnerships (Q7). The BEE business partners were further asked to share their experiences in concluding the BEE deals (Q8). Officials from the DMR were asked whether the department was involved in the creation of partnerships between white, foreign-owned and BEE companies (Q2.3). They were also asked to comment on the problems being faced by the BEE companies and to indicate possible solutions (Q4).

Executives of white and foreign-owned companies were asked whether they had to get BEE partners for every mine operation or project. Most of those interviewed indicated that their obtaining of new licenses or even renewing old-order rights to new-order rights were not based on having a BEE partner for every mining operation in the country. Their compliance took different forms which included: (1) selling shareholding, (2) selling mine assets, (3) creating joint ventures, (4) creating BEE companies, (5) developing black entrepreneurs in terms of giving them different contracts and (6) offering them procurement facilities. Most of these were discussed in Chapter Five and, therefore, there was no need to detail them here.

The question on what attracted white and foreign-owned companies to their partners enlisted various responses. Among these were the following:

1. Ability to act as lead partners and organise communities. (Some of the common statements were: knowing their way around communities, ability to lead communities and ability to provide guidelines to communities)
2. Operating within the mining areas. (This was used as a justification for community partnerships).
3. Having own assets. (This was with respect to BEE companies that had mining licenses).
4. Having engaged in previous BEE deals.

5. Political connections. Statements like the good will that the partner brings, the partner's contribution to peaceful democracy and, the partners' understanding South Africa's political and social environment are used to express the partners political connectivity.

One needs to note that most BEE partnerships are organised into consortiums that bring together various participants. These become shareholders in white and foreign-owned companies. There is a tendency in consortiums for individuals or companies (with a larger share allocations) to act as the lead partners. The lead partners act as coordinators and go-betweens of the consortiums and the white and foreign partners. It should not be surprising that lead partners are complaining of shouldering too many responsibilities. This was picked up from executives that act as lead partners in the interview. Lead partners were important for Richards Bay Minerals, Gold Fields and Aquarius. According to Mr Jabu Khubela of Richard Bay Minerals, the company expected Imbowu consortium that controlled 55 per cent of the Horizon Investment Consortium to assist in the management of the communities that acquired shares in the company. Mr Hollard (Gold Fields) had the same expectations of Core Lock Investments controlled by Jerome Braum and Paul Helepi as lead partners in Invictus to help manage the South Deep communities and, in particular, the community trust created on their behalf. This was also the position of Mkululi Dube (Aquarius) who expected Zwelake Mankazana as lead partner of Savannah Consortium to mobilize community support.

One has to take note of the existence of communities that actually own the land on which mining takes place. Mining companies used to pay loyalty to the communities for mining. With the coming of the MPRDA and the Mining Charter, mining companies are required to benefit communities within the mining areas. Instead of loyalties, the companies are now required to offer shares. Companies like Anglo Platinum; Impala Platinum and Aquarius Platinum all obtained their licences by transferring their royalties into shares to communities in the mining areas that the companies have operations. More detailed accounts of mining companies which have transferred shares to communities are provided in Chapter Five.

Mr Paul Dunne (Impala Platinum) was forthright about taking in communities as shareholders. He stated that the continued operations of the company depended on taking on the Bafokeng Nation (the owners of the land) as BEE partners. He continued to say: “I just want to remind you that our company has been in the area before the coming of the Mining Charter. There are other arrangements to benefit the community in place. When the B-BBEE policy was drafted and came into effect, this relationship was translated into shareholding”. Godfrey Gomwe (Anglo American) also indicated that Anglo Platinum’s partnership with the Bafokeng Nation was based on their ownership of the land. He went in detail about the history of his company’s operations in the areas owned by the tribe which dates so many years back in the country’s history of mining. When the BEE policy came, the company had to enter into the negotiations with the Royal Bafokeng team and the DME. He continued to say that the Bafokeng Nation’s team employed various experts. He hailed Bafokeng Nation’s strong and competent administrative structure as a main reason for the existing strong partnership.

Other companies have offered shares to communities within the mining areas that they operate and, hence, created community trusts. Mr Khubela (Richards Bay Minerals) said: We had no choice but to include communities in the BEE deals. It is the communities that welcomed us in their land. Our company had to ensure that the deal agreement suited us both”. He offered details of the deals and said Richards Bay Minerals offered the communities free shares and made once off payments of R17.5million (£1.35million) to each of its community partners around the mine (Sokhulu, Mbonambi, Mkwanazi and Dube). The amounts were placed in individual community public benefit trusts. Then, later, each community was to receive R3 million (£230,000) annually for social projects. The arrangements enabled the RBM to get a stamp of approval from the communities and to comply with the MPRDA and the Mining Charter.

Interest fell on understanding how Richards Bay Minerals and communities came to an agreement that both parties understood well and would suite each one of them as Mr Khubela indicated. But how could this be, when even the community leaders

could not communicate in English? (This was found out during my two days stay in the area and interacting with some community leaders.). When this was raised with Mr Khubela he responded that the community was represented by “knowledgeable people.” When asked whether the said ‘knowledgeable people’ understood issues of shareholding and negotiation skills to match the expertise of the company negotiators, Mr Khubela conceded that there was a power imbalance between the company negotiators representatives of the communities. BEE deals were therefore concluded within such limitations. He then excused himself and pulled out some pictures from one of the files and showed a photo (Figure 7.1) depicting one of the transactions that showed the Dube community representatives receiving their once off endowment.

Figure 7.1: The Dube Community Representatives Receiving a Once-off Endowment of R17, 5 million from RBM



Source: RBM

After the interview, an informal conversation with one of the community leaders (who wanted to stay anonymous) around the small shops in the vicinity of the mine neighbourhood was held. He said that although he had participated in meetings, the specifications and agreements in the deals between the company and the communities, the money and other benefits obtained were not well communicated to all the people. The community leader continued to say that members of the

community at the grassroots level do not agree on what community projects should be established with the funds from Richards Bay Minerals. What is taking place in the case of Richards Bay Minerals is more of an investment in social projects in the communities in which it operates as a means of limiting conflicts between the communities and the company. This confirms what Rajak (2012) and Busacca (2013) say that BEE deals with communities can be seen as corporate social responsibility (CSR).

The BEE companies with own assets attracted white and foreign-owned companies more easily than those with no assets. Mr Graham Briggs (Harmony) stated that the company's partnership with ARM was mainly because it had its own gold assets, which helped to increase Harmony's gold pipeline and increased commitment into company partnerships. Mr Cory (Assore) also indicated that it had entered into partnership with ARM in Assmang because of the same reasons.

Having concluded previous deals or having experience in the mining sector was an influential factor in Gold Fields' choice of Mvelapanda Resources as partner. Mr Peter Turner of Gold Fields pointed to the fact that its choice of partners had been based on a competitive bid but conceded that Mvelapanda Resource's was chosen because it had experience in the industry from its previous deals and shared the "common vision" with the company. He did not, however, elaborate on the issue of the common vision.

Political considerations influenced the choice of BEE partners for many white and foreign-owned companies. This is expressed in different forms. Ms Juanita Meijsen (Total Coal) indicated that the choice of Mmakau mining out of other competitive proposals was because it was led by a respectable business woman who knew her way around communities and had a clear understanding of South Africa's political and social environment. The business woman in question was Ms Bridgette Radebe, wife of Mr Radebe (the longest serving cabinet member, having been in the cabinet since 1994). Mr Cory (Assore) said that Shanduka was chosen, partly because of the "good will" that Shanduka could supply. Upon probing further what he meant by the

word, “good will,” he said it implied the ability and willingness to handle the communities in which the company operated. These, he said, could be handled better with the political power that Shanduka is associated with. He, particularly, mentioned Cyril Ramaphosa, a top ANC stalwart who was the Secretary General of the ANC before entering into business and is currently South Africa’s deputy president.

Mr Hollard (Gold Fields) was much more straightforward on his company’s choice of BEE partners for South Deep. The partners were chosen because of “their contribution to the peaceful transition to democracy in South Africa.” He mentioned Mandla Msimanga, Bafana Ngwenya and Baleka Mbethe who are members of the Invictus consortium. Ms Mbethe is associated with Turncard Trading, which holds shares in Invictus. Ms Mbethe has been the speaker of the national assembly twice, is current chairman of the ANC and acted briefly as deputy president of South Africa. Gold Fields partnership with Mvelapanda Resources was also influenced by its association with Tokyo Sekwale, former Gauteng premier turned businessman who recently served in president Zuma’s first term cabinet. The issue of political connectivity of the BEE beneficiaries was criticised by Khehla and Reddy (2006), Gqubule (2006), Mbeki (2007) and Cargill (2010). It is, however taken by Khan and Grey (2005) and Booth and Mutebi (2012) as part of the process of capital accumulation at an early stage of capitalist development.

Three issues were raised in relation to the problems white and foreign-owned companies faced with their BEE partners. These were: lack of own funds, limited knowledge of mining operations and costs for organising BEE deals. Mr Paul Dunne (Impala Platinum) complained that:

“Black owned-companies enter into BEE deals unprepared. When they sign the business deal, they sound promising, but a few months down the line they often fail to produce what they promised.”

When probed further on what he meant by that, he said that they could not produce funds to buy the shares they were allocated or even contribute to the company’s

running costs in a continuous manner. They had poor organisational skills and no understanding of how the business partnership in mining projects worked. He gave an example of contracting out mining activities which needed follow up. He stressed that “as new comers, BEE partners had to learn faster the technicalities of running mines.”

Mr Graham Briggs (Harmony) also touched on the same things and said that BEE companies lacked funds to pay for the assets as well as the operational capital to run these assets. As stated in Chapter Five, the company had to buy back some gold assets sold to Pamodzi Gold. He especially said that “you sell something with value but buy it back with little value.” He further said that BEE partners had poor organisation skills and did not understand well how the business partnership in mining projects worked. An example was given on issues of contracting out mining activities and obligations that went with joint ventures and contributing to costs promptly and dealing with other administrative and management tasks.

From interviews with executives of black-owned companies, it became clear that most of these companies were engaged in a number of partnerships with white and foreign-owned companies across different mining categories. Carl Kekana (Mmakau Mining) said that his company had partnerships with Impala Platinum, Total Coal, Hernie Ferrochrome and Tasmin Pacific. Sipho Mofokeng (Mvelapanda Resources) indicated that his company was involved with Northam Platinum, Trans Hex (diamonds) and Gold Fields and that it was always looking for promising opportunities for investment even if it might fail in others. He stated that “business was a learning curve and that diversification was a way of spreading the risks and maximizing returns that they should not be taken as evidence of greed.”

Clyde Johnson (Sedibeng Mining) said that his company was involved in steel with a company named Total Steel, in diamonds with Petras and had some projects that it ran independently. Nchakha Moloi (Motjoli Resources) mentioned Lafarge in cement and Exxaro in Coal. The respondent at African Spirit Holdings (name withheld) said his company was engaged in coal with Keaton Energy and Anglo Coal and also had a

deal in steel with Jindal Steel. Andre Wilkens (ARM) pointed to his company's involvement with many partners in various mining categories. These included joint ventures with Anglo Platinum, Impala Platinum, Harmony (gold), Xstrata (coal) and Assore (manganese). From the above, there is a general tendency for BEE companies to diversify into as many mining ventures spreading in different mining categories.

There was, however, very little information given on the partnerships between the black-owned companies and black-owned companies or broad-based groups, despite many executives raising complaints about their being expected to act as lead partners to handle business relationships with community partners.

In terms of what attracted the BEE companies to their white and foreign partners, the common answer was financial capacity. This included strong profit history, good cash flows, a strong management team, growth potential and the help and cooperation that they get afterwards which cements their cooperation. The fact of the matter, however, is that the BEE companies go out of their way to search for white and foreign partners.

Sipho Mofokeng (Mvelapanda Resources) had this to say:

“Depends on who opens a door when you knock and prospects you see ahead. Some of our business proposals were not answered. But, in general we made deals with companies from whom we could extract the most value and gain support.”

When asked to explain more on the kind of supports offered, he went on and added:

“The support that comes from white and foreign-owned companies is important, they use their ‘financial muscle’ to provide us guarantees with financial institutions for loans and grant us cash to cover our running costs while waiting for loan tranches. They invite us to board meetings and to formal and informal company circles from which we acquire new contacts and experience.”

Mr Nchaka Moloi (Motjoli Resources) shared his experience in this case and said that his company took the initiative to look for white and foreign-owned companies. The company had to make proposals and shop around for partners. The strategy was to submit applications to a diverse number of mining companies to increase the

chances of being selected. That was not an easy task and sometimes it took months. At times the company had to use a go-between who knew the world of business and people around. This was easily done with the help of people with business management, financial management, mining experts and lawyers. But the company found out that entering in coal ventures was more manageable. The second route of getting foreign and white partners was through acquiring prospecting and exploration licenses and entering into projects together.

Mr Bongani Mashishu of BSC Resources pointed out that it obtained exploration licences and carried out some exploration and then sold the projects at an advanced stage to white and foreign-owned companies. It was easier for his company to sell a bankable project than to wait to be picked up by white and foreign-owned companies as a business partner. The bottleneck here was caused by the delays in the performing of due diligence over the projects the company wanted to sell. When due diligence took too long it affected the company's cash flow position. Mr Clyde Johnson (Sedibeng Mining) noted that the company's partners purchased a controlling share of its exploration projects and other projects that the company had developed to a bankable feasibility stage. He indicated that:

“After struggling with getting BEE deals, we succeeded in finding a new strategy that brings income. We started acquiring exploration licences, doing some feasibility studies to a bankable level and selling them to mining companies at a profit while incurring minimal investments on our part. This has worked better than just waiting for partners.”

Selling projects was good for the company's reputation and made it easier for the company to be trusted by financial institutions.

The experience of the three companies, Matjoli Resources, BSC Resources and Sedibeng Mining indicate promising cases of BEE companies. This involves a movement away from being mere shareholders and business partners to white and foreign-owned companies to creating their own assets. Their successes call for government support similar to that offered by Japan to its local emerging companies (as detailed section 3.4.1 of this thesis).

Executives of black-owned companies pointed to the following problems experienced in their partnerships with white and foreign-owned companies. These include: Lack of finance, limited expertise in operations of mining activities, difficulties in accessing export markets and, shouldering responsibilities with the consortium and community partners. The lack of finance is dealt with in the next section. Mr Sipho Mofokeng (Mvelapanda Resources) explained lengthily about the other problems faced by black-owned companies. He started by pointing to the fact that as new comer in the industry and CEO, he had to invest much time in understanding how the mining industry works, how contracting out certain functions are conducted and problems encountered, how to source high skilled labour (from very competitive market) and how to meet obligations as a lead partner. Talking about being a lead partner to communities he said:

“Many communities assume that as lead partners we know better and can organise the communities to form companies; educating them about share earnings and losses; secure funding; arrange for legal advice and deal with the management issues.”

Carl Kekana (Mmakau Mining) said that his company had to assume the responsibility of organising communities which required explaining the nature of the deals they were entering in and liaise on their behalf with white and foreign-owned company partners. It also involved helping communities establish trusts. He said that the process was always costly and time consuming and needed constant collaboration with community leaders. Mr Clyde Johnson (Sedibeng Mining) complained of being placed in the middle of the communities and white and foreign owned-companies. These companies expected their BEE partners like Sedibeng to manage community relations. He said:

“Strangely, it seems as if it is our duty to manage communities on their behalf. On the other hand smaller consortiums and communities expect to exploit services from larger BEE partners for free without doing any work.”

The respondent at African Spirit Holdings also shared the frustrations he had encountered in dealing with communities in which there were no central, legitimate or acceptable leadership. He said that:

“Community leaders expected you to handle all the problems they were having with white and foreign-owned companies that they were dealing with, and that it was not uncommon to get caught in the community leadership squabbles.”

The respondent did not elaborate more on the kind of squabbles apart from saying that community leaders hardly agree on what decisions they have to take for the benefit of communities.

Shouldering too many responsibilities was also mentioned by Ms Nonkubela (co-founder of Motjoli Resources) who indicated that to avoid such frustrations it was better to refrain from consortium transactions although her company could not avoid community shareholders. Increasing responsibilities with communities was also indicated by Mr Bongani Mashishu (CEO of BSC Resources) who indicated that in the future his company would be considering limiting the number of consortiums to minimise added obligations. Mr Clyde Johnson suggested that the government should provide guidance to how relationships between communities and mining companies are supposed to be conducted and how lead partners are to organise communities. What is happening is that lead partners are always able to shoulder responsibilities with no guidance from the government.

Almost all the executives of black-owned companies interviewed acknowledged the lack of expertise on mining issues in general. Mr Clyde Johnson of Sedibeng Mining stated that:

“It’s hard for a black businessman to understand how proper assessment of ore body and other geological data mean to a mine valuation. Sometimes the sellers do not give us all the relevant data. We buy in mine projects without knowing the history of extraction costs and other historical data at the mine that would make one assess better the value of the assets and risks involved. Since our companies are small and are new we have to use consultants who also serve the interests of the same foreign and white-owned companies who sell us the assets. This raises the danger of us being ill- advised and ending up with assets that are costly to operate. Without proper

analysis of mining ventures it is difficult to convince financial institutions to fund mining projects.”

The respondent at African Spirit Holdings also mentioned the above problems but he thought that white companies were only interested in selling mines that were at the end of their lifespan and that required major capital investments. He said: “It is not surprising that BEE companies are buying in some mineral reserves that are getting deeper and deeper.” Mr Mangisi Gule (ARM Coal) and Mr Nchaka Moloi (Matjoli Resources) had suspicions that the white and foreign-owned companies sold to black-owned companies the projects in areas with poor infrastructure which they had kept as potential reserve. Mr Moloi stated that:

“When the (BEE) policy came, some of the white companies offloaded to us those mining ventures that had no access to infrastructure and that made it difficult to develop. It is not surprising that many BEE companies are selling their mining ventures after buying them without adding value. It is an experience to learn from.”

Carl Kekana (Mmakau Mining) expected the selling party (white or foreign-owned company) would play a bigger role and unpack the resource base of the mining assets at the time of sale. Unfortunately, he continued, sellers hardly did that, as a BEE company that buys into a project or mine venture has to struggle to find other hidden realities of the mining venture. It is often difficult to clearly assess the opportunities and the risks involved in a mining venture. He thus gave the following advice:

“BEE partners as buyers and starters in the mining industry have to be clever enough to avoid being sold very marginal and unproductive assets. They should know genuine contractors for various mining tasks. This is a hard part and needs moral obligation from contractors. In short there is a long list of huddles to cross.”

A director of a company, who wanted to remain completely anonymous, talked at length about the problems of access to both the domestic and export coal markets. He said that the major mining companies often had contracts with Sasol or Eskom to supply coal. He said that, however, if a BEE company buys into a project from these companies, there was no assurance of taking over the coal supply allocations that were given to the major mining companies in the project that they had sold to blacks. He also said that the major company had a choice to allow the new BEE entrant to

take over the existing allocations or source supplies elsewhere. Even where a BEE company managed to take over the supply allocations, upon the expiry of the contract, the supply allocations has to be re-negotiated with Sasol or Eskom afresh. It is not uncommon for a BEE company to lose the battle.

The second challenge is meeting the requirements of the coal export market. The anonymous director further said, a BEE company entering in the export market has to depend on technology, washing facilities, transport networks and export markets already established by the old major companies.⁹⁹ He stated that:

“What I am trying to say is that mineral extraction is a tough business and there are a lot of imbalances between BEE companies and major miners. They have the experience, the finance, the technology, the facilities, the smelters and the export connections. We have to struggle and cooperate with them. That’s not always easy.”

Such statements indicate the existence of an information asymmetry and other imbalance of economic opportunities that exist between the incumbents (white and foreign-owned companies) and the new comers (BEE companies). In short government is called upon to support BEE companies.

The DMR officials were asked whether the department was involved in the creation of partnerships between white and foreign-owned companies. Mr Tladi said that initially the DMR helped to show-case the activities of BEE companies and distributed brochures and lists of emerging BEE companies and about the B-BBEE policy at seminars and conferences. The provincial offices also kept such information. Companies seeking BEE partners were provided with such information. In contrast to expectation, the DMR did not and does not act as a match maker to those who aspire to enter into BEE deals. It can only confront white and foreign-owned companies when they fail to take on blacks as partners.

⁹⁹ The Richards Bay Coal Terminal was created in 1973 and is privately owned. It was through the DME coal export forum in 2002 that the BEE companies were allocated one million export tonnages. This increased to four million tons in 2006/2007. (See DME Report, Provision of Export Facilities for BEE companies at the Richards Bay Coal Terminal, 2007c).

The answers from the DMR on the issue of problems being faced by the BEE companies and the possible solutions according to Mr Tladi is that, the Department was aware of the problems being faced by the BEE companies; that BEE companies lacked capital, some are being liquidated, they lack expertise to deal with the mining issues. These predicaments include the inability by community shareholders, in particular, those with no strong administrative structures and inadequate understanding the mining policies, to draft agreements or understand what has been signed for in the mining deals. The Department, however, has no concrete programmes in place to aid the BEE companies in such issues, and insisted that black companies that enter in the mining industry should be left alone to struggle under the market mechanism and to compete with other incumbent mining companies.

7.5 BEE Funding and Conditions Attached

The study sought answers from executives of white and foreign-owned companies on their major sources of funding (Q9.1). They were also asked how and to what extent they helped to secure funding for BEE transaction and the conditions that they attach to the BEE transactions (9.2, 9.3, 9.4, 9.5 and 9.6). Finally, the executives were asked to indicate how the financial position (debt situation) of their BEE partners had affected the white and foreign-owned companies (Q9.7 and 9.8). The problem of blacks lacking own funds for capital finance and to buy shares from white and foreign-owned companies was highlighted in previous chapters. Executives of BEE companies were therefore asked to indicate their major sources of funding (Q10), the type of funding received from different sources (Q11), the conditions attached to the funding (Q12) and whether they were facing financial difficulties and how they have dealt with them (Q13). Officials at the DMR were asked to indicate whether there were any special programmes in place to help BEE companies financially (Q4.1) and whether the white and foreign-owned companies fulfilled their R100billion pledge in support of BEE transactions (Q4.2).

The following funding sources were highlighted by the executives of white and foreign-owned companies interviewed: JP Morgan, HSBC, UBS, Bank of America, Merrill Lynch, Deutsche Bank and Denham Capital. What came out clearly from the

interviews was that mining needed a lot of funding in terms of capital and operational costs.

The help that white and foreign-owned companies offered to their BEE partners included: direct provision of loans; bridging finance; guarantees for loans from other sources, covering BEE partners' transaction costs and buying back shares that once were sold to BEE partners. Mr Mahomed Sadat (BHP Billiton) stated that his company provided loans and loan guarantees to many of its BEE partners. Mr Mark Cutifani (AngloGold Ashanti) said that it was hard to quantify all the financial obligations that went into BEE deals. He pointed out, however, that his company funded its ESOP partners at a cost of R1.8 billion (£150million) in 2006. This is apart from footing legal and administrative fees for the transaction.

Mr Hollard (Gold Fields) related how his company had facilitated the financing of Mvelapanda Resources when it acquired Gold Fields shares. He was bitter that, despite all the successful efforts to secure capital on behalf of Mvelapanda Resources, they could not hold on to the shares. Mr Paul Dunne (Impala Platinum) revealed that it provided guarantees to its BEE partners in the Marula Platinum Mine for the outstanding loans of R885million (£80million) in 2010. Mr Godfrey Gomwe (Anglo American Plc) pointed to the support Anglo Platinum had given to Anoorag (a black-owned company) in order for Anoorag to operate its projects. Godfrey Gomwe also indicated that Anglo American Plc offered Anoorag contract jobs like cleaning services, pumping services and transport services and procurement facilities to other BEE partners related to Anoorag for such partners to improve revenue. (For more on Anoorag's deals and funding see Chapter Five).

Ms Juanita Meijsen (Total Coal) stated that she could not disclose financial dealings with their BEE partners as this was deemed confidential. She claimed that she needed authorisation from the company headquarters abroad to diverge such information. Ms Meijsen's statement non-disclosure corresponds to a point raised by Welch et al (2002:615) that elite interviewees may refuse to provide information, claiming to be bound by organisational policies.

Mr Mashego Mashego (Harmony) spoke extensively about his company's loss of Pamodzi Gold which was liquidated in 2010, when asked whether white and foreign-owned companies had lost any BEE partners as a result of debt. His company had to buy back its Free State mine assets which it had sold to Pamodzi Gold in 2008.

Executives from black-owned companies interviewed indicated that they obtained funding from local investment companies, commercial banks, development banks (DBSA and IDC), pension funds, stock market and from white and foreign business partners. The financial help comes in terms of loans and capital injections when white and foreign-owned companies buy shares in BEE companies or projects. Mr Bongani Mashishu (BSC Resources) and Mr Clyde Johnson (Sedibeng Mining) said that the acquisitions made by white and foreign-owned business partners in their projects were their major source of funding.

All the executives from black owned companies noted that they were facing debts. None of them, however, was prepared to mention the amounts of debt their companies were facing. Sipho Mofokeng (Mvelapanda Resources) complained that operational costs in mining ventures were huge and that financial institutions neither covered these costs nor provided bridging finance. Bridging finance is very crucial in keeping things going while waiting for a loan tranche. He continued to say that it was the white and foreign business partners who had helped to keep the company afloat. The support could not meet all the costs and it reached a point when Mvelapanda Resources was forced to sell its shares in both Gold Fields and Northam to repay its debts. When he was asked if state financial institutions were not helping, Mr Sipho Mofokeng said that it was not possible to get big money from state funders. He suggested that the government should have had concrete long-term programmes in place to finance black investors in other sectors as well as in mining.

Harold Motaung (Anoorag Resources) indicated that his company received financial support from Anglo Platinum without which it would have been impossible to develop its Bokoni mines. Both Mr Mashiathshidi and Jack de Vert (Wesizwe

Platinum) who is a director of finance remarked that it had been extremely difficult for Wesizwe to raise enough funds to kick start the mining process. He said that financial negotiations took time, that he had to shop around, and that the company ultimately raised funds from the Chinese Jinchuan Company in order to operate the Bakubungu Platinum mine. Mr Nchaka Moloi (Motjoli Resources) had to sell its stakes in Coal of Africa to pay for its debts and raise capital. He explained that mining involved a chain of activities, including exploration, project evaluation, mine construction and mine production. Each stage in the chain, Moloi continued, demanded different kinds of financial resources, and that some were not funded by financial institutions. Moloi also said that “the major bottleneck for BEE companies was raising funds for kick-starting a project. It is here that government funding should be focused.” The anonymous director of African Spirit Holdings said that it was against company policy to openly disclose debts and also jokingly said:

“If you indicate your debt situation openly, you are likely to be in trouble with your shareholders and lenders and you tarnish your reputation. The good policy is to indicate how you are dealing with debts.”

It was important to get opinions from government officials on financial support to BEE companies. When asked about support to BEE companies, Mr Tladi (DMR) pointed to the existence of the National Empowerment Fund (NEF), a financial institution established specifically to support BEE initiatives and the Industrial Development Corporation (IDC). He further pointed to the country having a strong private financial base that BEE individuals and companies can benefit from. When he was further asked about the possibility of using selective intervention to support those BEE companies that were showing progress, he hastened to say that the government respected the autonomy that the financial institutions had been given and that the government had no power to interfere with their funding decisions or tell them to favour a certain BEE company.

In the course of this study, questionnaires to the IDC, DBSA and NEF were sent, asking for data in respect of their BEE funding in the mining sector. Upon not receiving any response, a visit to their offices was made. At NEF and after being sent

from one office to another, Ms Ntanzu, the head of the Strategic Fund Department at NEF, disclosed that the NEF only supported some small mining companies. She also said that up to the end of December 2011, NEF had funded four transactions in the mining sector worth R90.4 million (£6.9million). She, however, refused to divulge the names of the beneficiaries on the grounds that such information was protected by the financial regulations confidentiality rules. Mr Fikile Khumalo (the head of mining at the IDC) acknowledged by phone that the IDC had funded BEE deals in the mining sector but could not provide the actual figures, despite numerous requests and promises. Chapter Five reveals a number of IDC funded BEE transactions and shares the IDC purchased in mining companies.

In response to the question on the conditions attached to BEE deals, a variety of responses were received by executives of white and foreign-owned companies. Mr Mark Cutifani (AngloGold Ashanti) noted that one of the conditions for its ESOP deal was that shares could not be sold on the open market but transferred between employees. He said that this was because such shares were normally issued at a discount to help the employee of the firm. He also remarked that it was important to ensure continuation of such benefits to other employees which were left out. Mr Cory (Assore) indicated that his company used lock-in conditions to ensure shares were only traded with other BEE companies in order not to lose the BEE status. The foresaid conditions contrast with Mr Paul Dunne (Impala Platinum), where terms prescribe commitments to partnership so as to avoid a situation which he calls “rush in rush out” (meaning companies quickly getting in business partnerships and quickly quitting) on the part of its BEE partners. Mr Mark Hollard (Gold Fields) also specified that lock-in conditions were also used to make the business deals more binding. He gave an example of his company’s experience with Mvelapanda Resources which had sold most of its Gold Field shares and leaving it with little black shareholding. Hollard insisted that the long lock-in periods are preferred to prevent a repeat of a similar situation from happening.

From Gold Fields’ company reports, it showed that the company used a 30 years lock in period for its South Deep. The 30 years lock period corresponded to the life span

of the mine. Such a long lock in period means that the BEE partners are permanently tied to the deal until the mine closes. In response to why the company had given itself, as opposed to a completely new company, the first option to back its assets, Mr Mahomed Sedat (BHP Billiton) said:

“These assets belonged to the company, it sold them because of compliance to the Mining Charter, and then it is right to get back the assets if they are sold again.”

It is the opinion of this study that Mr Mahomed’s answer indicates the quest for the white and foreign-owned companies like BHP Billiton to hold on their assets.

All the executives from black-owned companies interviewed complained about the conditions attached to the BEE transactions with their white and foreign partners. The main conditions mentioned are related to the use of the lock-in periods and the demand to resell assets back to their white and foreign partners. They were not willing to discuss further how these conditions affected them. Carl Kekana (Mmakau Mining) and Bongani Mashishu (BSC Resources) both noted that they had to accept the conditions before the deals could be signed. Mr Kekana said specifications of conditions were confidential between the parties who had signed and that it was improper for one party to disclose them without the consent of the other party. The inference is that, while strongly justified by the white and foreign-owned companies, the lock-in clauses may limit BEE companies from making strategic decisions. For example, it would be difficult for a BEE company to make profits if share prices rose and to minimise risks when share prices tumble. It would not be wrong to say that white and foreign-owned companies use these strategies to protect assets and ensure wealth flowed back if for whatever reason BEE companies failed to hold on to their shares or mining assets.

7.6 The Role of Government in the Implementation of the B-BBEE Policy

Executives of white and foreign-owned companies were asked whether the government assisted them in their BEE partnerships (Q10), to remark on the role that the government should play in helping BEE companies (Q11), and to comment on

how the mining policies had helped, constrained and generally affected white and foreign-owned companies' operations (Q12). Executives of BEE companies were asked to indicate how the government had assisted them (Q14), what role they thought the government should play in the mining industry (Q15) and to assess how the mining policies had affected the BEE companies (16).

Most of the executives of the white and foreign-owned companies responded that the government had no definite role in the BEE deals apart from ensuring that, in the conversion of old-order rights to new-order rights, the companies had accommodated blacks. Mr Cory (Assore), Mr Graham Briggs (Harmony) and Mark Cutifani (Anglo Gold Ashanti) mentioned the government's facilitative role in the license conversion, in particular, with respect to mines that were already in operation. According to these executives, the period given for conversion of licences allowed their companies to smoothly continue with their activities. According to Mr Cutifani, government cooperated with regard to being a regulator, and also enabled the company to convert all its old order licenses without any problems. Ms Juanita Meijsen (Total Coal) said that it was difficult to source BEE partners. She also said that she had expected the government to have had a list of BEE companies, or to have at least organised the prospective blacks aspiring to enter into mining. She stated that:

“One had to rely on what was written in the media to identify black companies and we ended up approaching the same companies which were prominent in the media. Now we get the feeling that was bad, and that we concluded deals with the same companies over and over. What were we supposed to do? From the beginning, the government was supposed to make necessary preparations to support the policy implementation process and how to include blacks.”

As a government instrument, licencing succeeded in forcing the white and foreign-owned companies to take on blacks. Mr Paul Dunne (Impala Platinum), in particular, said the company received a directive from the government to accommodate community BEE partners before its license conversion could be effected. But this does not mean the government was involved in day to day negotiations of BEE deals between Impala Platinum and its BEE partners before deals were concluded.

There was a general view amongst the executives of white and foreign-owned companies interviewed that government should focus on creating and implementing policies that ensure the success and growth of the mining sector as a whole. According to Mark Cutifani, the government has removed the legal restrictions that acted as barriers for blacks to enter into the industry as owners. Since there are no longer legal restrictions, the government had to concentrate on the growth of the mining industry as a whole. He said that if the industry grew, black-owned companies would also grow. He specified more and said, the government would, have to concentrate on removing infrastructure bottlenecks such as electricity and water supply, roads and railways.

Both Mr Hollard (Gold Fields) and Mr Cutifani (AngloGold Ashanti) suggested that the government should play a major role in helping BEE companies with funding due to the fact that they were struggling to source funds so as to exploit opportunities in a capital intensive industry as mining. Mr Cutifani stated that to reap any returns, BEE companies needed capital from the start until when their operations were stable. He further stated that what the existing white and foreign-owned companies and the financial institutions can offer is not enough. He suggested that the government and all the mining companies needed to sit together identify the hurdles and find solutions. He insisted that apart from funding, the government should provide BEE companies with legal advice, technological and business expertise, and help them to access international markets. Assisting BEE companies to access the international markets was also mentioned by Mr Mahomed Sedat (BHP Billiton). Mahomed Sedat elaborates:

“One gets a feeling that BEE companies expect white and foreign-owned companies to be like export market brokers for them. The government should increase its role in this regard.”

Relationships at the community level and the use of lead partners in BEE deals were interrogated in the interview with executives of white and foreign-owned companies. Mr Cutifani (Anglo- Gold Ashanti) and Mr Dunne (Impala Platinum) said that lead partners were important as they knew the communities better. The relations with the

communities, however, are conducted without any guidance from the government. Mr Cutifani then suggested that the government should provide clear guidance on how to deal with the community shareholding and what each party (the communities and the mining companies operating in the area) has to do. When asked to specify what kind of guidance was needed, he said that:

“There are cases where more than one company becomes a partner to the same community. The way in which each company deals with the community may differ, one may do more and another do less. This may lead to conflicts or both companies taking it easy in their roles. Those who will suffer are communities, especially those with no centralized strong leadership. Currently, the government has no guidelines on how to engage with community shareholders.”

When he was further asked which rules were guiding the company in its deals with the communities, Mr Cutifani said that his company was guided by Social Economic Assessment Tool Box (SEAT) developed by its mother company in early 2000s. He said that SEAT was also used for his company mining ventures in South American countries.

Responding to how the regulatory framework had impacted the mining companies' operations, executives of white and foreign-owned companies provided different answers which some were complaints. The major complaint was the wide coverage of elements that companies have to comply with. Mr Johan Dippenaar (Petrus Diamonds) complained that the policy coverage was too wide and included equity transfer, employment equity, housing for miners, management, procurement, enterprises and skills development. These were on top of the normal community social responsibilities. Dippenaar said that there was need to narrow these elements. He did not specify what should be dropped. Johan Nelson (Pan African Resources) also complained about the same issues and said he understood the importance of housing, and also remarked that mine towns grew fast and died if there were no mine activities and attracted squatters. He also noted that the government was in a better position to plan for mining towns even if it meant being subsidised by mining companies.

Mr Mkululi Dube (Aquarius) complained that it took time for the government to offer clarity on policy changes that were openly being discussed in the media. He said: “Delays on the government’s position on issues concerning policy directions create confusions and uncertainty. At the end, share values are negatively affected as investors worry about their investments.” The same sentiments were also expressed by Mr Ian Farmer (Lonmin) who gave an example of when the government took too long to respond to the issues of nationalisation of mines that were raised by the ANC Youth League in 2010 and the possible changes in the mine tax regimes. While the media was awash with reports of controversies, the government kept quiet. Mr Hollard (Gold Fields) said that there was a great need to synchronise the MPRDA, Mining Charter, the Score Card for the mining industry, the Generic Score Card and the Code of Good Practices, in order to avoid unnecessary confusion. He gave an example of the Generic Score Card that allowed foreign companies to only contribute to a lump-sum of money in lieu of equity. He also cited the Mining Charter that bound a company to so many things, including equity transfer and the sharing of management.

The answers from executives of black-owned companies on the role of the government were rather different from those provided by the white and foreign-owned companies. There was a unanimous acknowledgement and appreciation of the BEE policy among all executives of the BEE companies interviewed. Mr Bongani Mashishu (BSC Resources) stated that:

“We are here because the new mining regulatory regime allowed us to enter the industry in the first place and forced large companies to transfer assets to small players like us. Then we expect to grow and expand. Issues that might arise from now onwards, may just explain the impediments on our part as miners and not the case of blacks being prevented to enter the industry like in the time of apartheid.”

Carl Kekana (Mmakau Mining) referred to the BEE policy as the “miracle of the new democracy”, because, according to him, it had enabled black peoples’ entry into a formally and racially restricted business area. Mr Rowan Smith (Shanduka Resources) hailed the government for having negotiated with the white conglomerates to open up opportunities for blacks. It is the negotiations that resulted

in the B-BBEE Act, the MPRDA, the Mining Charter and many other charters that have mushroomed. He said the challenge involved how blacks were benefiting and how they could gain benefit more.

Most executives of the BEE companies indicated that the government's role during the implementation stage was limited. Mr Sipho Nkosi (Exxaro) and Mr Nchaka Moloi (Motjoli Resources) indicated that the government was involved in the creation of Exxaro and ensuring that it became successful. Both executives could not provide specifics on how the government was involved in the Exxaro deal. They indicated that they had not received any government support since then. However, Sipho Mofokeng (Mvelapanda Resources) and Steven Mashalane (ARM Platinum) indicated that the government (and not necessary the DMR) helped in the relocating of people to give way to new and BEE-compliant mining operations. Carl Kekana (Mmakau Mining) said that, publicly, the government had confronted the white and foreign-owned companies on their limited compliance with the BEE equity transfer.

There was a mixed reaction from executives of black-owned companies on what role the government should play. Some of the answers provided were in a form of grievances. In general, BEE companies would like the government's role not to be limited to the making of the laws and regulations but extended to monitoring and enforcing compliance; providing infrastructure; sourcing of funds; nurturing the BEE companies to maturity and helping them with community shareholders. Mr Nchaka Moloi said that he expected the government to cancel the mining rights of those companies that failed to comply so that they would feel the impact of the policy. Sipho Mofokeng was emphatic on the necessity of the government's enforcement mechanism to be put in place and to be utilised. He noted that establishing a compliance system would force the white and foreign-owned companies to comply. Mr Mofokeng insisted that:

“Those mining companies that have not complied with the MPRDA and the Mining Charter should be investigated and forced to enter into partnership with BEE companies and no favouritism should be entertained. There should be the institutionalisation of punitive measures for non-compliance. An audit should be

undertaken to find out the truth so that it comes up with a programme to enforce compliance on a continuous basis.”

However, it is doubtful that blacks have the finance to buy shares, mine assets and enter into partnerships and sustain them, and while also lacking capital and facing impediments.

Mr Mashiatshidi (Wesizwe Platinum), Mr Harold Motaung (Anoorag), Andre Wilkens (ARM) and the respondent of African Spirit Holdings (whose name is withheld) expressed the need for the government to focus on the provision of infrastructure that would be necessary for the mining companies to operate. Mr Mashiatshidi added that the government should also help the BEE companies with technology and export markets. It is only Mr Clyde Johnson (Sedibeng Mining) who differed with the rest, insisting that the government should not dictate what the companies should do or how they had to run their business.

It was difficult to identify women groups that could be used in the study sample. No question on the role of women was put in the interview questions. An opportunity availed itself to talk to Nolutando Langeni of the South African Women in Mining Association (SAWIMA), met at the Mining for Change Conference (held at Sandton Conference Centre on 6-7 September 2010). She highlighted three things about the limited role of women in the mining industry; a situation that she said had to change. She said that, there was discrimination against employment of women in the industry:

“Mining companies think that women have got no place both in surface and underground mining activities. Where few are employed they are not even provided amenities suitable for women. Second is mining companies are reluctant to partner with women-owned mining companies. When women submit their applications they do not get answers and we keep on wondering how men get selected as partners. Third was the lack of political will. Under the former Minister of Mineral and Energy, Pumzile Ngucka, women received a lot of help, but, under Minister Susan Shabangu, women were struggling and kept on knocking at her door which rarely opened. What we want is the adoption of a set aside-principle whereby women are allocated mine projects especially in government mining areas and get help.”

Responding to the question whether there were women who were participating in extraction activities, she said that there were few. She continued that she knew many who wanted to partake but were frustrated by the system and the government's lack of support.

7.7 The Future of B-BEE Policy

The question on the future of the B-BBEE policy was asked to white and foreign-owned companies (Q13) and to BEE companies (Q17). The DMR on its part was asked to share its views on the future of the B-BBEE policy and its implementation (Q6).

The general response from executives of white and foreign owned-companies was that they expected the Mining Charter targets to remain enforceable after 2014. The executives also indicated that they anticipated the continuous entry of new BEE companies and some current BEE partners to sell their equity. Mr Nicholas Hollard (Gold Fields) and Mr Graham Briggs (Harmony) were optimistic that more assets were going to be transferred to blacks, that the current BEE partners would increase their shareholding, and that the government would force the white and foreign-owned companies to take completely new faces as partners. Ms Juanita Meijsen (Total Coal) and Mr Paul Dunne (Impala Platinum), however, expected their BEE partners to exit from the current deals, due to possibly accumulating of debts.

What emerged from the interviews with the executives of BEE companies is that there was almost a consensus about them exiting from their current partnerships. Mr Nchakha Moloi (Motjoli Resources) indicated that his company was going to sell its stake in Exxaro and use the proceeds to finance its own projects. Mr Clyde Johnson (Sedibeng Mining) stated that he had always intended to sell the BEE stake and to go on his own. Sipho Mofokeng pointed out that Mvelapanda Resources had already streamlined its business and disposed of shareholding in areas deemed not to be strategic. Mofokeng also noted that he expected to exploit the opportunity when the existing conditions expired in 2014. The respondent at African Spirit Holdings was also considering exiting from a number of the current BEE deals and to use proceeds

from the sale and “scratch” capital from other sources to develop other projects in the hope that this would help the company to qualify for listing on the JSE.

The impression is that executives of black owned companies are not happy with the existing partnerships. These are problems that need to be investigated further.

Other executives, however, wanted to retain the existing partnerships. Mr Andre Wilkens (ARM) stated that his company worked hard to reach where it was. Wilkens also said that he intended to expand and become stronger in the mining industry. Carl Kekana (Mmakau Mining) was uncertain on what would happen after 2014. He was not sure whether his company was going to get more cash by selling the current equity, or was going to persevere by staying with the current partners. He said that all depended on the future market for the mineral products and investment opportunities that were remaining ahead.

Mr Tladi of the DMR indicated that the government expects mining companies to comply and to be on guard. He stated that:

“For the time being, we are like soldiers. We are on guard and we have to wait and see. We will have to go back to the drawing board if the compliance levels are not met.”

With these words, one should expect a more stringent enforcement of the policy, which also implies that 2014 should not be seen as a cut-off date for the B-BBEE policy.

7.8 Conclusion

This chapter sought to identify factors that had helped or hindered the BEE implementation policy in the mining sector (objective four). The discussion also sought to identify what the stakeholders in the industry expected to be the role of the government in the implementation of its BEE policy (objective five). What has emerged from the interview analyses above is that there are two factors that have

helped the implementation of the MPRDA and the Mining Charter. The first is licensing. The demand for white and foreign-owned companies to convert their old order rights to new order rights forced them to take blacks as partners. This is clear from what was found out in chapter five and the responses given by executives from these companies. The black executives on their part have applauded the new mining regulatory framework and the use of licensing as a policy tool, as it enabled their companies to enter the mining industry and to acquire prospecting, exploration and mining rights. It is the licensing demands that brought about BEE transactions and deals in the mining sector. The deals have taken different forms, but, all in all, have involved the sale of equity to blacks at the company levels, in existing mine operations or the complete sale of mines or mine projects to blacks.

The second is the acceptance by the white and foreign-owned companies of the BEE regulatory framework. The reasons for these companies' acceptance have been highlighted in the BEE literature in Chapter One (see discussions in Chapter One by Iheduru 2004, 2008; Dansereau 2005; Burton and Hawthorne 2007; Sartorius and Botha 2008; Marais 2011; Capps 2012; Lynch 2012). It is the executives of these companies who took the responsibility for the implementation of the Mining Charter. These created specific companies to accommodate black shareholders (SPVs), in some cases provided free shares (or at a discount), arranged for loans and provided for guarantees for loans from other sources. This, in a way, gave the white and foreign-owned companies a leeway of establishing their own criteria for choosing partners that included those with previous business experience and political connectivity. White and foreign-owned companies were also free to set the conditions in the transactions like using lock-in periods so that blacks did not easily get out of the BEE deals.

There are some positive aspects that this Chapter has revealed as corroborated by the findings in Chapter Five. There have emerged a new set of successful black-owned mining companies. A reference is made to Motjoli, BSC and African Spirit Holdings. These three companies add up to a list of well-known companies like ARM, Mvelapanda Resources and Shanduka Resources. The new set of companies that are

developing better strategies is growing. These enter into exploration projects, develop them to a bankable stage and sell them at a profit. Cases like these should call for a selective intervention approach, as used in Japan (see discussion by Kaplan 1972; Lall 1996 and Rhee 2004 in section 3.4.1 of this thesis). Japan supported its local industries until they could stand on their own and break into international markets. The government in South Africa should learn from the Japanese experience and hand-pick such successful companies and offer them support and nurture them until they could stand on their own.

Blacks' participation in equity ownership, control and management in the mining industry has not been an easy ride for them. A number of factors have hindered blacks' success. These include: lack of own funds, lack of appropriate data on mining ventures that they buy, difficulties in accessing land, lack of government policy directive on community shareholding and limited government support.

The impacts of factors that hinder the successful operations of black companies were discussed above. The irony is that the government is aware of the problems, but, its stance has remained the same: to leave the blacks to fend for themselves under the free market forces. Scholars like Sowel (2004), who was against the USA's affirmative action, called for similar action from the government. However, all the executives of the mining companies interviewed from white, foreign and black-owned companies would like the government to play a more direct role. In particular, executives from white and foreign-owned companies called upon the government to provide infrastructure (water, electricity and transport network), help find export markets for blacks, and provide extra funding. On the other hand, executives from black-owned companies expected the government to support them and play an enforcement role and ensure that equity transfer to blacks took place. They were calling upon the government to carry out an audit of all the white and foreign-owned mining companies to see if they had complied with the equity targets; those which had not complied should face penalties.

8 Study Discussion Conclusions and Recommendations

8.1 Introduction

In order to redress the economic imbalances created by the apartheid regime, the ANC government has embarked on economic intervention measures to enable blacks participate in all sectors of the South African economy. This thesis contributes to the understanding on how economic empowerment has been implemented in the mining industry and its outcome. The study in particular sought to analyse changes in equity ownership, control and management of South Africa's mining industry with the coming of the MPRDA (2002) and the Mining Charter (2002) which together are the core of the B-BBEE policy for the mining industry. The MPRDA tied the conversion of old-order mining rights to new-order mining rights by the mining companies that existed at the time to the incorporation of blacks. The Mining Charter required the white and foreign-owned mining companies to transfer 15 per cent equity to blacks by 2009, reaching 26 per cent by 2014. The Charter also required that white and foreign-owned companies take blacks as business partners. The Charter equally demanded that white and foreign-owned companies incorporate blacks in the management of their companies irrespective of the amount of shareholding in the hands of blacks. The target set was 40 per cent black representation in management positions. This was clarified in the Amended Mining Charter (2010) to 40 per cent black representation on the boards and senior management of these companies irrespective of the amount of shareholding in the hands of blacks. The 40 per-cent black representation was expected to de-racialise the boards and management of white and foreign-owned companies. It was therefore important for this study to also explore the extent of black control and management in the mining sector.

The rationale behind this study focus as indicated in Chapter One is that BEE equity and ownership transfer represented a new model for citizen participation in the natural resources sector. A brief comparison was made between this model and how post-colonial sub-Saharan African countries unsuccessfully sought ways to directly

own and control mineral resources through state ownership, nationalization and indigenisation.

The structural adjustment programs (SAPs) under the auspices of the World Bank and the IMF that followed in the 1980s reversed nationalization and indigenisation and governments began to focus on liberalization (acceptance of the free market system), privatization (de-nationalization) and promotion of foreign direct investments. In this new policy shift, what was missing was policy focus on citizens or indigenous ownership of mining assets. South Africa's MPRDA and the Mining Charter that came two decades later represented a re-emergence of another form of indigenisation which was hailed elsewhere in the continent for signalling a new hope of using mineral resources not only for economic growth but also acting as a model for changing the ownership structure that would include indigenous citizens while not excluding foreign investors. Zimbabwe and Namibia have introduced similar programs. The questions in people's mind were (and still are); has South Africa's BEE policy succeeded? What would make South Africa succeed or not?

From the beginning of B-BBEE implementation process, the focus of researchers and the government has been on how to estimate the equity ownership transferred to blacks and control and management of mining companies by blacks. Earlier studies that focused on equity transferred to blacks looked at the number and value of BEE deals concluded between white and foreign-owned companies and blacks (Empowerdex 2004, 2008; Ernest and Young 2011); counting the number of black-owned companies operating in the mining sector (Research Africa 2006, 2008; DME 2008b) and estimating the value of black equity ownership (DME 2009; KIO 2010). All these studies were limited to JSE listed companies and the use of market capitalisation. This thesis also replicated the use of market capitalisation of JSE companies and like its precedents found that compliance levels are low.

While the use of market capitalisation of JSE listed mining companies is informative, it was argued in the study that it has some limitations (see Chapter Four). This is because it leaves out those companies that are not listed on the JSE; does not explain

changes in equity ownership structure at company level, fail to reveal mining assets that are exchanged between white and foreign-owned companies and their black counterparts, does not disclose strategies that are used in concluding mining deals and conditions attached to the deals. Furthermore the use of JSE data reveals little about the changes in the organisation structure of mining companies (board characteristics) and structures management (management characteristics). The characteristics that add to a better understanding of compliance include race and gender and size which are important to give a clearer picture and a deeper understanding on the extent by which blacks attain control and management of mining assets. No other study known in South Africa has such a broader coverage.

The study was done by first using the market capitalisation of JSE listed mining companies to estimate equity owned by blacks. Then the study used a sample of 72 mining companies in all mine categories (PGM, diamonds, gold, coal and ferrous and non-ferrous minerals) and traced over 100 mining companies to explore changes in equity ownership structures (shareholding and mine assets). The concentration was in the mining deals that were concluded by white and foreign-owned companies with black owned companies in order to reveal how the individual companies complied. Second, the study looked at changes in the organisation structure of mining companies in terms of directorship and management, 468 directors and 226 managers of mining companies were explored. This helped to explain the extent by which blacks have attained management and control of mining assets. Third, interviews were conducted with executives from 27 white, foreign and black-owned mining companies, few government officials and other experts to get more insights on BEE related issues. The focus on the changes in the structure of individual mining companies has revealed strategies that are used to transfer mine assets to blacks and conditions attached.

What follows below is a summary of the findings on the main objectives of the study. This is followed by the recommendations on how the implementation process can be improved and future areas for research.

8.2 Findings with Regard to Research Objectives

To execute this study, the objectives of the study were broken down into the following sub-headings: Mining companies' compliance with BEE equity ownership and management and control (objective one); reclassification of mining companies (objective two); Strategies used by white and foreign-owned companies to transfer equity ownership to blacks (objective three); Forces that facilitated or hindered the BEE implementation process in the mining industry (objective four) and; The role of the government (objective five). Below these are expanded in accordance with the findings of the study.

8.2.1 Mining Companies Compliance with BEE Equity Ownership and Management and Control

Chapter Five showed compliance by white and foreign-owned companies with equity transfer to blacks in three specific elements. The first is compliance with the MPRDA demand for the conversion of old-order rights to new-order rights, a process which was to be accompanied with the taking on of blacks as shareholders and business partners. The detailed analysis in the chapter reveals that all white and foreign-owned companies that existed before the policy have converted their old-order rights to new-order rights. New companies all obtained new licenses and complied with the demand of having black shareholders and business partners.

The second element is compliance with the Mining Charter targets of 15 per cent equity transfer to blacks by 2009 and 26 per cent by 2014. The findings of this study with reference to equity transfer based on market capitalisation of the entire JSE listed mining companies (by 12 July 2011) is that it stood at 7.4 per cent. This is in line with the findings of the DMR (2009c) which found out that black equity ownership was at 9 per cent. KIO's study (2010) put this at 5.27 per cent. Both of these studies used 25 mining companies that represent 85 per cent of JSE market capitalisation. Thus the compliance levels are low. At a closer look, only three black-owned companies have significant shares on the JSE. These are Exxaro, ARM and Royal Bafokeng.

However, apart from the low compliance levels indicated above, the Chamber of Mines (2010) disputed the compliance levels given by the DMR (2009c) indicated above. The Chamber claimed that its members had achieved the 15 per cent target in 2009 and most have gone over the 26 per cent requirement. This study explored the source of the disparities. These emanate from the interpretations of equity ownership that had been used in the policy documents, changes on how to define equity ownership that came later, different valuations mechanisms used to assess mineral assets and the fact that some mining companies are not listed in the JSE (see Chapter Five). It is suggested by this study that the DMR needed to clarify how equity calculations are to be done at both the company level and the entire sector.

Due to the limitations of using the market capitalisation of mining companies listed in the JSE, this study has gone beyond using the JSE data. It looked at changes in the equity ownership structure of mining companies (company shareholding and mining assets) and organisation and management structures. This has enabled a broad analysis. The changes in equity ownership made possible in particular to explore mining deals concluded by individual mining companies in all mining categories. Starting with the study sample of 72 companies extended in all mine categories, this thesis revealed over 100 mining companies that have been involved in economic empowerment deals or what are referred in the thesis as BEE deals. The deals involved individual companies and broad based groups like consortiums ESOPs and community trusts. The existence of community shareholders signify that white and foreign-owned companies cannot bypass the communities where mining takes place and ESOPs -workers in their companies.

By exploring mining deals, the study has revealed the names of the white and foreign-owned companies that have complied, the strategies that they used to transfer mine assets to blacks, the mines assets that they chose to sell to blacks and those that they retained 100 per cent shareholding, which mine assets they sold, whether they sold at the mine level or main company level, and the kind of black-owned companies that they sold to. This has offered a deeper understanding of compliance

in the industry and helped to explain challenges of blacks attaining management and control of mining assets of the country.

The thesis has also revealed that most BEE deals were concluded by two companies- Anglo American Plc and BHP Billiton. These are the two companies that were more involved in the unbundling process that occurred in the early 1990s before the official B-BBEE policy was established. These two companies spearheaded the selling and buying of mine assets among white-owned companies and few were sold to black-owned companies. When the B-BBEE policy came, the old BEE deals were recognised under the 'continuous consequences principle' allowed in the Mining Charter. The problem of upholding to this principle is that it tends to exaggerate the actual number of BEE deals that a white or foreign-owned company has as it is common for a black shareholder to fall out from such deals for any reason.

The third element is the demand of 40 per cent black representation on the boards and senior management of white and foreign-owned companies. The study findings from Chapter Six have revealed that those companies with more shareholding (50 + 1 share) tend to have more directors and managers of people of their own race. This tendency is rooted in the past ownership structure which was of concentrated ownership, cross ownership, family and institutional ownership, interlocking directorship and the use of a dual share ownership structure, in particular, low voting shares. Despite the unbundling that occurred in the early 1990s and that is discussed in Chapter Two of this study, the elements of the past ownership structure has remained. This was indicated by Halse (1982); Barr and Kantor (1995); Kantor (1998); Malherbe and Segal (2001); Judin (2003); Chabane et al., (2006). Their findings are similar with the findings of Chapter Five of this thesis, that white and foreign-owned companies still own and control the bulk of the assets in South Africa's mining industry and there is significant cross holding.

It was revealed in Chapter Five that there was still a significant shareholding controlled by foreign-owned companies, financial institutions and families, and that there was also the use of low voting shares. Foreign companies such as Anglo

American Plc, BHP Billiton and Xstrata-Glencore control over 50 per cent of the JSE listed mining companies. These companies are likely to make major decisions in their companies and not blacks, challenging the Mining Charter's demand for black control and management. In short the call for 40 per cent black representation on the boards and senior management of white and foreign-owned mining companies does not automatically translate into management control.

The demand of transferring BEE equity ownership control and management was done under the assumptions of Berle and Means (1932) thesis of separation of ownership and control. The scholars' main argument was that modern firms are of dispersed ownership where there is a separation between equity ownership and control and that managers and not shareholders tend to control firms. The structure of South Africa's firms even under the BEE policy does not strictly apply to Berle and Means (1932) argument. Thus board membership and senior management in South Africa is likely to reflect the existing ownership structures (of concentrated nature) rather and may not easily accommodate the Mining Charter's demands.

The arguments of the thesis that equity ownership determines control of mining companies. This is corroborated by the findings of this thesis in Chapter Six which analysed control (board characteristics) and management (management characteristics) that were explored from the organisation structure of mining firms in the sample. To capture the analysis a phrase, 'control what you own', is used in section 6.4 of this thesis to explain the tendency that equity ownership determines control. By exploring the organisation structure, the study has explored 468 directors and 226 managers. It was found that black managers are concentrated in mining companies where blacks have majority shares. Black presentation on the board of all mining companies in the study sample stood at 32.2 per cent (151 out of 468). Black representation on the boards of foreign-owned companies in stood at 19.6 per cent and in white-owned companies at 31.1 per cent. Although these aggregates look promising, a closer look at black representation in the board of white and foreign owned of mining companies was concentrated in just a few companies. Within the foreign-owned companies black representation was concentrated in just four

companies – Lonmin, Coal of Africa, Gold One International and DRD Gold. In the white-owned companies black representation is concentrated in three companies – Impala Platinum, Harmony and Gold Fields. This is different from black representation in black-owned companies where blacks constitute 53.7 per cent of the board members. Thus, white and foreign-owned companies have more white directors in their companies and black-owned companies have also more black directors.

Overall black representation in the senior management of mining companies stood at 27.8 per cent. However, for foreign-owned companies black representation in senior management was 18.5 per cent. These were concentrated in Anglo American subsidiaries – Kumba and Anglo Platinum and Palabora Mining. It should be noted that Palabora Mining is jointly owned by Anglo American and Rio Tinto. Black representation in white-owned companies stood at 20.5 per cent. Black representation in the senior management in BEE companies stood at 35.7 per cent. There are still a number of white-owned companies without black people in senior management (see section 6.5.2 of the thesis). Black women representation in the board of mining companies has been only 4.5 per cent, most however are white women. It is noted here that the B-BBEE policy regards both white and black female as disadvantaged group.

The board sizes of mining companies are not large. Findings of this study indicate that the average size is 10. Most white and foreign-owned companies have small number of board members, for example Impala has 6, Gold Fields 5 and Harmony 5, which corroborates with He and Sommer (2006:9) and Lipton and Lorch (1992:65) arguments that globally the trend has been to firms' preference for small board size. This questions the extent by which the white and foreign-owned firms would accommodate blacks in their boards.

From the above analysis the control what you own tendency is realistic in the mining industries corporate structure. It is stated here that in the face of blacks lacking funds to afford shares or their own assets, 26 per cent black equity and the 40 per cent participation of blacks in the board and management of white and foreign-owned

companies as demanded by the Mining Charter is limited. In other words, blacks' affordability should be enhanced by concrete support mechanism. What is stated here supports what Capps (2012) says that the new regulations eliminated barriers to investments and resulted to rapid growth of the sector, but his growth has not been accompanied by the anticipated de-racialization and growing black ownership and control of the economy which was seen as an imperative after the apartheid policies that excluded blacks. The challenge of BEE policy makers then becomes how to afford the acquisitions by blacks in the industry. Japan's model of economic intervention and discussed in this thesis may provide the answer.

8.2.2 Reclassification of Mining Companies under B-BBEE Policy

It was the expectation of those who drafted the Mining Charter that incorporating of blacks in the mining industry would black enterprises (those with 50 + 1 vote), black controlled companies (25 + 1 vote). The findings of this study from Chapter Five have revealed the existence of those with 50 + 1 share) which have become large companies. These include ARM, Exxaro, Royal Bafokeng Holdings, Shanduka Resources, Mvelapanda Resources and Optimum Coal. These are well-known black-owned mining companies. The thesis has further revealed that BEE companies are concentrated in the coal and PGM sectors. PGM has attracted big black-owned mining companies like ARM, while coal has attracted middle and small-scale mining companies. This is understandable, because of the simple technology that is used and the large domestic market fuelled by demands from Eskom (to make electricity) and Sasol (liquid fuels).

Apart from the companies mentioned here, Chapter Five has also highlighted the emergence of a new group of smaller BEE companies which have 50 +1 share. Reference is made to Motjoli Resources and BSC. Although these companies are not large, they initiate better strategies to survive in the industry by entering into exploration and developing projects independently and then selling them at much higher gains to white and foreign-owned companies. It is expected that the government could pay more attention supporting such companies. There are also companies with 25 + 1 share. As indicated in section Chapter Five (section 5.5) most

of foreign-owned companies transferred 26 per cent shareholding to blacks upon receiving their licenses. These companies qualified to be classified as black-empowered companies. Examples include Savanna Consortium, Imbani Platinum and Sedibeng Mining.

The thesis has explained the challenge of maintaining black shareholding and the emerging dilution of BEE equity. Thus, by the time of writing, three companies had lost their BEE status (no longer having 50+1 share), as, having become too indebted, they had sold their shares back to the white or foreign-owned companies. These include Wesizwe Platinum, Northam Platinum and Optimum Coal. Unless the government solves the funding problems of black-owned companies, more and more companies are likely to revert to white and foreign ownership.

It was also pointed out in the findings in Chapter Five that most companies owned by blacks are made up of community shareholders, ESOPs, groups and consortiums. Among large community shareholders is Royal Bafokeng which is a majority shareholder (50+1) and has a permanent and strong administrative structure. However, a number of the communities do not have such strong administrative structures. Most consortiums are made up of diverse individual shareholders and small groups where each might have small percentages of shareholding (1-5 percentages). A reference is made to Invictus (see figure 5.6 of the thesis). Consortiums are often led by a lead partner, that is, those individuals or companies or group with the largest stake in the consortium deal. Lead partners act as a bridge between the consortiums or groups with white and foreign-owned companies. From the interviews conducted for this study, lead partners complain of shouldering too much responsibility and lack of government direction to guard such relations. This calls for the need to understand more on the dynamics of consortiums in order to have a proper grasp of black participation in the mining sector.

8.2.3 Strategies Used by Foreign and White-Owned Companies to Transfer Equity Ownership

It is pointed out in the thesis that the implementation of the BEE policy has been left in the helm of market forces without enforcement and support mechanisms from the government, notably funding. This was explained in Chapter One of this thesis as a major setback of the policy. Leaving the implementation process under the free market forces gave white and foreign-owned companies the freedom to choose what assets to keep 100 per cent to themselves and what to sell to blacks; the kind of shares to offer (low voting shares); whether to conclude deals at the mine level or at the project level; who to enter into partnership with; how to structure the sales and what conditions to attach on the transactions. These strategies have implication for blacks' attainment of control of mining assets as the strategies mentioned here helped the white and foreign-owned mining companies to protect their assets.

This study has observed this the tendency where white and foreign-owned companies retained the most lucrative assets for themselves and sold marginal mines and projects to blacks. A good example of this is represented by Anglo American Plc in its coal BEE transactions (see section 5.4.4 of the thesis). The company also created a separate subsidiary-Anglo Inyosi in which it placed its mine projects and sold 26 per cent shares to blacks. From the interviews conducted by this study, executives from black-owned companies also complained about white and foreign-owned companies offloading their marginal mines, those with declining reserves or those that were difficult to mine. Black executives also complained that they have scant knowledge about mining assets they buy and sellers do not divulge historical data on the mines. This has basically limited the extent by which blacks exploit opportunities provided by the MPRDA and the Mining Charter.

The study also found out that white and foreign-owned companies established special purpose vehicles (SPVs) and Holding Companies (HOLDCOs). For example, Anglo American Plc which has various subsidiaries created HOLDCOs including Eyesizwe in 1999, Pelewani Investments (Anoorag Resources) in 2004, Exxaro in 2005 and Panahalo Investments in 2006. The companies created were used to conclude BEE

transactions with blacks. The SPVs and HOLDCOs are legally controlled by black companies as they hold 50+1 shares in them. What happened is that the white and foreign-owned companies retained substantial shareholding (over 20 per cent) in the SPVs and HOLDCOs and in some cases offered their black shareholders. This was also corroborated by literature on BEE policy and its implementation in Chapter One of this thesis (see Gqubule 2006; Bull 2007; Buttler 2007 and Cargill 2010). Their retention of substantive shareholding in the SPVs and HOLDCO ensures that they have a say in how the created companies operate. It is right to say that their strategies indicate their quest to hold on to their mine assets. As we have seen from the analysis in Chapter Six, a 20 per cent shareholding is enough to give owners control as indicated by Mizruchi (2005:11) and Leech (2002:18) who put the thresholds at 4 to 25 per cent.

The findings revealed conditions that white and foreign-owned companies use in concluding the mining deals. This has often involved the use of 'lock-in clauses' which bind black partners to remain for a specified period of time. This enables the sellers (white and foreign-owned companies) to remain BEE compliant for the set period. Lock-in clauses, however, comes at a cost to BEE shareholders because it ties down their investment and makes it difficult for them to get out of deals if poor returns are experienced or share prices plummet or make profits if share prices rise. BEE partners are also prevented from selling to third parties but only to their sellers (white and foreign-owned companies) who have the first option to buy back their assets.

This study has revealed that the choice of BEE partners by white and foreign-owned companies was influenced by whether the aspiring partner has had own assets, had been engaged in previous deals and of course had political connections. All these qualities are connected as BEE beneficiaries in the first phase (1990-2004) (before the coming of MPRDA and the Mining Charter) were connected to the ANC and were handpicked by the party. These initial beneficiaries then qualified for new partnerships in the second phase (2004-2009) because of having engaged in previous deals, having business experience and having own assets acquired in the first round. The end result has been a concentration of BEE deals in a smaller set of companies

and individuals with family, political party and professional affiliations. Thus, ARM and Shanduka have become beneficiaries in a variety of transactions stretching through many mining categories. Cronyism and patronage is therefore entrenched in South Africa's BEE policy implementation process.

From the literature used in this thesis (see Chapter One) cronyism and political patronage has been portrayed as a means of primitive accumulation in a situation where capitalism has not taken root. This in the hands of a strong authoritative state and limited opposition from the citizens can be used to foster economic development and transformation as indicated by (Khan and Grey 2005, Southall 2007, Booth and Mutebi 2012, Kelsall 2013, Beresford 2015). But as argued in Chapter One, there is a thin line between cronyism, rent seeking and corruption as all are likely to generate hostility in society. In addition, it is hard to ascertain that capital accumulated from cronyism and patronage is being channelled to economic development and transformation. This is despite the claim by Booth and Mutebi (2012:381-2) that President Kagame of Rwanda had succeeded in using cronyism to create a group of capitalists that are transforming Rwanda. In South Africa, the ANC hand-picked few of its members to benefit from mining deals, but, then it even the ANC itself has made itself a BEE beneficiary through its companies and funds itself through crony business relations (Beresford 2015:3, Cargill 2010:93-95).

The questions that the study raises and cannot be definitely answered here are: is the ANC leadership able to channel economic resources to their cronies who will then be able to produce enough capital to achieve the BEE policy goals? Is the party preparing for a democratically and racial free economy in which everyone has an equal economic opportunity? Will cronyism be tolerated in South Africa with its strong civil society and vigilant opposition political parties?

8.2.4 Forces that Facilitates or Hinder the BEE Implementation Process

From the general literature in Chapter One, the analysis of compliance of the white and foreign-owned companies made in Chapter Five and interview conducted by this study and reported in Chapter Seven, several forces that facilitate and others that

hinder the implementation of the MPRDA and the Mining Charter are identified. The main two forces that facilitate are the government regulations namely licensing and the white and foreign-owned companies' acceptance of the MPRDA and the Mining Charter. From interviews that this study has conducted with executives from black-owned companies, the introduction of the BEE policy broke the legal barriers that were used during the time of apartheid to keep blacks from participation in the industry. Licensing has allowed blacks' entry in the mining industry and become owners of companies. The acceptance of the BEE policy by white and foreign-owned companies has enabled blacks to be shareholders, and business partners. Thus black-owned companies have become a reality. The challenge now is not the entry of blacks in the industry but their survival given the existing impediments and for the objectives of the MPRDA and Mining Charter to be realised.

From the interviews conducted by this study, executives of black owned companies have mentioned various impediments that they face in the mining industry. These include lack of own funds; lack of appropriate data on mining assets that blacks buy, limited understanding about how investments in the mining industry are conducted; poor technological knowhow; lack of knowledge and strategies to access international markets, difficulties in accessing land and lack of government policy directive on how to conduct relationships between white and foreign-owned companies with community shareholders. All these hinder blacks a better chance of exploitation of opportunities that B-BBEE policy offer in the mining industry.

Funds have become critical in order for blacks to buy shares from the white and foreign-owned companies and to run their own mining operations. Before unbundling, the mining houses were crucial in helping mining companies that came up with viable mine projects. It was the mining houses that organised finance, sponsored mining companies to list on the JSE, helped in acquiring technology and sourcing important skills including foreign labour (see section 2.3 of the thesis). After unbundling, some of these functions ceased. There are no concrete support mechanisms for black-owned companies. As new comers to the industry they have to fend for themselves in the realm of the free market apart from the fact that they have

few or no assets to offer as collateral; experience difficulties in obtaining loans from competitive financial markets; may not qualify for public listing and their companies may take time to realise enough internal returns that can be channelled back to capital. The government was expected to intervene and provide BEE funding beyond what the state financial institutions provide and offer relevant support. The Business Map (2205), Southall ((2006), Wendy and Bull (2007), President Mbeki (1999) and Cargill (2010) all called the government to establish funding programs for BEE beneficiaries including those the mining industry.

Black-owned companies also rely on the white and foreign-owned companies to offer them collateral, offer them shares at a discount and loans and finance to cover the running costs. All these come at a cost of black-owned companies accepting awkward conditions as explained above. Some of them have debts which forces them to sell shares or even mine projects. This causes dilution of shareholding and a loss of control of their assets. Reference was made in Chapter Five of Mvelaphanda Resources that had to sell its shares in Northam to meet its debt obligations and hence dilution. Likewise, Wesizwe had to sell 49 per cent of its shareholding in order to raise capital, thus diluting black shareholding and forcing the company to relinquish the overall management to a Chinese company that had bought its shares and gained control of the company. Pamodzi Gold has been liquidated. These are just few examples that indicate the importance of funding in the sustainability of mining deals. It should not be surprising if more of the BEE companies lost their BEE status or are taken over by white and foreign-owned companies.

One of the arguments the study has made is that, unless government initiates a support strategy in particular on funding, of tackling problems faced by black-owned companies, there will be limited success in meeting the demands of the Mining Charter. In short, the government should offer BEE companies support and the concentration should be on those BEE companies that are making promising progress. These are situations that should inspire the BEE policy makers in South Africa to use selective intervention (as was the case in Japan) and hand-pick those black-owned companies that have promising growth and nurture them until they can

stand on their own. Building successful entrepreneurs may take time and its success may require commitment from the government.

Enforcement mechanism is also inadequate. This has been highlighted in Chapter One section 1.4, as one of the main weakness that has led to managerialisation of the BEE policy. The government has resorted to using private assessors to determine the extent to which white and foreign-owned companies have complied and issue them with certificates to determine the level that they have reached. But private assessors do this for profit. The lack of an enforcement mechanism implies that the government is unable to properly gauge the achievements of the policy. The BEE commission came later (2015) and has not shown its power to enforce the policy. Executives of black-owned companies are calling upon the government to conduct an audit on the compliance of white and foreign-owned companies and use punitive measures against those that have not complied. In Chapter Three the experiences of USA and Nigeria showed that there is a tendency for economic empowerment policies to be opposed by those who used to benefit in the pre-regulation era or those negatively affected by preferences offered.

It is acknowledged in the study that in 2010, the B-BBEE Presidential Advisory Council was established in line with the B-BBEE Act (2003), and in 2015, the BEE Commission was created following the amendment to the B-BBEE Act (2014). It is hoped that these institutions will be more vigilant in enforcing policy, check the loopholes, shortfalls and gaps and offer solutions. There is also a need to integrate the BEE policy in the implementation of the recently elaborated national development plan.

8.2.5 The Role of the Government

In Chapter Three, a number of factors were identified as being crucial to the success of the affirmative action policies in the USA, economic empowerment policies in Malaysia and the indigenous policies in Nigeria. These include political will, the establishment of institutions to enforce the implementation of the policy and putting in place supporting mechanism for the beneficiaries. Enforcement was important as

empowerment policies have a tendency of being opposed by those who benefited from the status quo as indicated in the experiences of USA's Affirmative Action and Nigeria's indigenisation policy. The failure of the indigenisation policy in Nigeria partly was attributed to the lack of proper planning, limited promotion of entrepreneurial pool, lack of proper monitoring and enforcement mechanisms and the absence of penalties for non-compliance.

It is argued in the thesis that the transfer of equity to blacks involves the promotion of black entrepreneurs that are capable of entering and surviving in the mining industry. For this reason the thesis explored other cases that were relevant for entrepreneurial development. The experience of Japan is relevant in this regard, as the government there as indicated by Lall (1996), Wade (2004) and Kohl (2004) used what has been described as selective, targeted, pervasive and intrusive intervention to ensure economic transformation and promotion of strong local entrepreneurs who could break into world markets. The success of Japan also depended on its long term centralized planning and coordination, the establishment of permanent consultative mechanisms between the government and the business sector and control of financial institutions. It is the control of finance that was essential to continuously offer extensive incentives (carrots) and coercive enforcements (sticks) to gain compliance from businesses. MITI in Japan played a central role in hand-picking firms that performed better and giving them various incentives and supports including finance, technology, management and even helping to resolve their daily business huddles.

These are the missing elements in South Africa's implementation of its BEE policy. As indicated by Tangri and Southall (2008:702) the government's priority at the time of policy formulation was to promote peace, reconciliation and not to frighten domestic and foreign investments. It was thus willing to cooperate with corporate capital to come up with a policy that would be acceptable to the foreign companies and local industry provided blacks are accommodating blacks in the South Africa's economic landscape. At the implementation stage, the government has adopted a hands-off approach and relies on the price mechanism not only to formulate strategies upon which equity will be transferred or control is attained by blacks and

managers are accommodated but even to assess the implementation. The government expects its hand-off policy in implementation will bring about increased black participation in the mining industry. Thus, the successes of BEE dependents on the willingness of the very companies that were being regulated (white and foreign-owned companies). Scholars like Cargill (2010) has been calling for the government to put in place a financial support mechanism. This was also echoed by South Africa's former President Mbeki (1999) who said that the government should aid black entrepreneurs.

What is emerging from the interviews conducted by this study with the executives from white and foreign-owned companies is that the government should play a supporting role in the implementation of the BEE policy. In particular the government should establish a funding programme for black-owned companies in mining, offer them business skills and pave their ways to international markets. Executives from the BEE companies are also calling on the government to monitor and enforce BEE compliance, support them with funding, offer them skills related to mining and take responsibility with community shareholders.

8.3 Recommendations and Areas for Further Studies

This study contributes to the understanding of the implementation of the B-BBEE in South Africa's mining industry by highlighting the extent to which white and foreign-owned companies through strategizing their BEE deals and transactions have controlled the BEE implementation process. This control involves them having a free hand in the choice of black-owned companies; what assets to transfer to their black partners and what to retain 100 per cent to themselves; the type of shares they offer (low voting shares), the conditions to attach to the transactions (lock-in clauses); and the manner that they deal with their partners from where mining takes place (community partners). This situation arose mainly because first blacks lack their own funds to buy shares and even to operate their mine projects and other host of impediments that they face. Second the government offered little support to emerging black entrepreneurs and left the implementation of the policy to the free

market forces, and; third lack of enforcement institutions since the inception of the B-BBEE policy until recently (2015).

Lack of funds led to black-owned companies to accumulate debts and some to be liquidated. There are also impediments that black-owned companies' face that adds to their injury. These include difficulties in accessing land in mineral areas; accessing international markets; obtaining historical data on the mining ventures they purchase and having limited knowledge on how to successfully run mining ventures. The government's stand to leave black entrepreneurs in the helm of the market forces makes the B-BBEE policy look like an appendage to the accepted free market economic principles, something to be tolerated but not vigorously supported. This is despite the fact that the government itself acknowledges the impediments that blacks faced.

The lack of support from the government in particular additional funding has resulted in the loss of BEE status for a number of black-owned companies such as Wesizwe, Northam and Optimum Coal. Thus the call by President Mbeki (1999) that the government should aid black entrepreneurs has not materialized. The government has to understand that equity transfer and conferring control and management to blacks boils down to having black entrepreneurs entering and surviving in the mining industry.

Apart from diminishing of its importance in the economy, there has been a phenomenal growth in value of the mining industry from R760billion (£69billion) of market capitalisation in 2002 to R2trillion (£181billion) in 2009. The growth of black equity ownership has not matched this phenomenal growth and stood roughly at R143billion (£13billion) or 7.4 per cent of the 2009 figure indicted here. More worrisome was the fact that only two companies – Exxaro Resources and African Rainbow Minerals accounted for 72.5 per cent (R104billion –£9.4 billion) of the total value owned by blacks. But at a closer look, this study has revealed the existence of a growing number of BEE beneficiaries. Chapter Five has revealed over 100 mining companies and those owned by blacks have been substantial. These are organised under consortiums, community shareholder and ESOPs which form part of broad-

based groups which are offered small percentage of shareholding (1-5 percentages). The growth in number of black-owned companies negates the earlier critics of BEE policy who claimed that the implementation of the policy has produced few beneficiaries (Khehla and Reddy 2006; Gqubule 2006; Mbeki 2007). Blacks may lose such potential if the government does not put in place a concrete support mechanism.

On the bases of the above, the study is making the following policy proposals. The government should intervene and offer direct support to black-owned companies in terms of finance, business skills, technological knowhow, and access to land and international markets. South Africa needs to learn from the Japanese experience of selective intervention in support of its local entrepreneurs and companies until they can stand on their own. The government should not expect its regulatory power to produce positive outcomes if it does not directly involve itself in the B-BBEE policy implementation process. Otherwise the BEE will not sting nor produce honey!

As indicated above from the beginning, there was no monitoring and enforcement mechanism. The government in South Africa has resorted to using private assessors who do it for profit to determine the extent to which white and foreign-owned companies have complied. This is a shortfall that has limited the ability of the government to properly enforce compliance and gauge the achievements of the policy. It is much later (2015) that the government created the BEE Commission. It hoped that this institution has enough power and capacity to enforce compliance in the mining industry.

There are few recommendations that are made here. First the institution should urgently provide guidelines on how mining companies should deal with communities. A large number of BEE beneficiaries are community shareholders. Mining companies have resorted to using lead partners who act as a bridge between them and consortium or community shareholders. The findings from the interviews conducted by this study, lead partners are complaining on lack of policy guidance and added responsibility.

The institution should also clarify on the future of the BEE policy whose cut-off date was 2014 but extended to 2015. Currently the policy has a short term focus. This creates uncertainty. Policy-makers should realise that it will take time to minimise the impact of the past injustices. Thus they need to take a long-term view for the policy to have a lasting impact.

The institution should also come up with a method of how to estimate equity owned by blacks. This is an area that has brought conflict between the Chamber of Mines and the DMR.

While this study has highlighted some of the challenges faced by black-owned companies, no detailed analysis was carried to reveal more on firm level factors that may lead to success or act as impediments. This has been a limitation of the study that calls for further research at the firm level of black-owned companies. There is in particular need for a deeper investigation on business strategies, the funding mechanisms used; challenges faced and how have been dealt with. Findings could help the government to formulate a more meaningful support mechanism for black-owned companies.

Another area that needs further detailed research is the existing relationship between communities and mining companies. The feeling of lead partners carrying a lot of responsibilities with little direction indicates a problem exists or may exist somewhere also the chain of relationships. The findings may help to properly grasp on the dynamics of consortiums relationships that are beneficial to all stake holders. This would be useful in formulating proper guidelines of such relationships.

To sum up, this study has indicated the limitations of regulations that seek to deal with economic imbalances. Thus, without putting in place supporting mechanisms and institutions to monitor how the regulations are implemented, little can be achieved. This was the case for B-BBEE policy in South Africa's mining industry in particular with a call for equity transfer and attainment of control and management

by blacks and hence the limited fruits from economic government intervention programs.

9 References

- ABN. “Lonmin Plc. “Facilitating New Ownership of Incwala/resources and Placing”. <http://www.cms.private label.co.za/pls/cms/iac>. Accessed 14 November 2011
- Acemoglu, D, Gelb, S and Robison J.A. 2007. *Black Economic Empowerment and Performance in South Africa*. Bramfontein, Johannesburg: The EDGE Institute.
- Adejogbe, M. 1984. “The Myths and Realities of Nigeria’s Business Indigenization”. *Development and Change*, Vol. 15.
- Adelzadeh, A. 1996. “From RDP to GEAR: The Gradual Embracing of Neo-liberalism in South Africa”. *NIEP Occasional Paper Series* No. 3.
- African National Congress. 1955. The Freedom Charter. <http://africanhistory.about.com/od/apartheid/a/FreedomCharter.htm> Accessed 10 May 2009
- African National Congress. 1992. *Ready to Govern: ANC Policy Guidelines for a Democratic South Africa adopted at the National Conference -28 – 31 May*. Johannesburg
- African National Congress. 1994. *The Reconstruction and Development Programme: A Policy Framework*. Umnyango Publications.
- African National Congress. 1995. *Draft Minerals and Energy Policy for South Africa*. Johannesburg. <http://www.anc.org.za/ancdocs/policy/minen.htm> Accessed 10 May 2009.
- African National Congress. 2012. *Maximizing the Developmental Impact of the People’s Mineral Assets: State Intervention in the Mineral Sector*. ANC Policy Institute, Johannesburg.
- African National Congress Youth League. 2010. “Towards the Transfer of Wealth to the Ownership of the People as a Whole: A Perspective on Nationalization of Mines, Discussion Document”. *Umtabulo*, No33.
- African Rainbow Minerals. 2009. *Annual Report*. Johannesburg.
- African Rainbow Minerals. 2010. *Annual Report*. Johannesburg.
- African Rainbow Minerals. 2011. *Annual Report*. Johannesburg.
- African Rainbow Minerals. 2012. *Annual Report*. Johannesburg.

- African Union. 2009. *Africa Mining Vision*. Addis Ababa.
- Andreasson, S. 2010. "Confronting the Settler Legacy: Indigenization and Transformation in South Africa and Zimbabwe". *Political Geography*, Vol. 29.
- Andreasson, S. 2010. "Indigenization and Transformation in Southern Africa". *British International Studies Conference*, University of Exeter, 15-17, December.
- Anglo American Plc. 2002. *Annual Report*. Johannesburg.
- Anglo American Plc. 2006. *Transformation Report (BEE)*. Johannesburg.
- Anglo American Plc. 2009a. *Fact Book 2008/9: Coal*. London
- Anglo American Plc. 2009b. *Fact Book 2008/9: Platinum*. London
- Anglo American Plc. 2009c. *Fact Book 2008/9: Base Metals*. London.
- Anglo American Plc. 2010. *Annual Report*. London.
- Anglo American Plc. 2012. *Annual Report*. London
- Anglo American Sustainable Development Performance: Landau study. <http://www.angloamerican.co.uk/aa/development/performance/cs/economy/economy> Accessed 1 July 2009
- Anglo Coal. 2009. *Report to Society 2008: Responsible and Sustainable Mining*. Johannesburg.
- AngloGold. 2002. *AngloGold's Response to Mining charter*. <http://www.anglogold.reprts/>
- AngloGold Ashanti. 2007. *Annual Report*. London.
- AngloGold Ashanti. 2010. *Annual Financial Statements*. London.
- AngloGold Ashanti. 2012. *Annual Report*. London.
- Anglo Inyosi. 2010. *Annual Report*. Johannesburg.
- Anglo Inyosi. 2011. *Annual Report*. Johannesburg.
- Anglo Inyosi. 2012. *Annual Report*. Johannesburg.
- Anglo Platinum Limited. 2008a. *Annual Report*. Johannesburg.
- Anglo Platinum Limited. 2008b. *Meaningful and Sustainable Empowerment in the Platinum Industry*. Johannesburg.

- Anglo Platinum Limited. 2009. *Annual Review*. Johannesburg.
- Anglo Platinum Limited. 2010. *Annual Report*. Johannesburg.
- Anglo Platinum Limited. 2011. *Annual Report*. Johannesburg.
- Anglo Platinum Limited. 2012. *Annual Report*. Johannesburg.
- Anoorag Resources Corporation. 2011a. *Annual Report*. Johannesburg.
- Anoorag Resources Corporation. 2011b. *Management Discussion and Analysis of Financial Conditions and Results of Operations for the Period Ended March 2011*. Johannesburg.
- Anoorag Resources Corporation. 2011c. *Company Fact Sheet*. Johannesburg.
- Aquarius. 2010. *Annual Report*. Johannesburg.
- Aquarius. 2011. *Annual Report*. Johannesburg.
- Aquarius. 2012. *Annual Report*. Johannesburg.
- Arezki, R and Van der Ploeg, F. 2008. “Can the Resource Curse be Turned into a Blessing? The Role of Trade Policies and Institutions”. *Oxford Centre for the Analysis of Resource Rich Economies (OXCARE)*, Research Paper No. 2008 – 01.
- Assore. 2009. *Annual Report*. Johannesburg.
- Assore. 2010. *Annual Report*. Johannesburg.
- Assore. 2011. *Annual Report*. Johannesburg.
- Assore. 2012. *Annual Report*. Johannesburg.
- Audra, L.B., Laura, C.T., Jonathan, M.K and Charu G.R. 2005. The Determinants of Corporate Board Size and Composition: An Economic Analysis. Paper presented at the American Financial Association 2005.
- Baallersen, E and Amos, D.A. 2010. *Toward A Theory of Regulation*. Cambridge University Press.
- Baartjes M and Goudan, K, 2011. “Synopsis of the Report of Mineral Resources and Reserves in South Africa”. Eco Partners, <http://www.ecopartners.co.za>. Accessed 23 May 2012
- Babbie, E and Mouton, J. 1998. *The Practice of Social Research*. Cape Town, Oxford University Press.

- Balshaw, T and Goldberg, J. 2005. *Cracking Broad Based Black Economic Empowerment: Codes and Score Cards Unpacked*. Human and Rousseau, Cape Town.
- Balshaw, T and Goldberg, J. 2008. *Broad – Based Black Economic Empowerment, BEE Score Card*. Human and Rousseau, Cape Town.
- Barr, G, Gerson J and Kantor, B. 1995. “Shareholders as Agents and Principles: The Case of South Africa’s Governance system”. *Journal of Applied Corporate Finance*, Vol. 8, No. 1.
- Baumol, W.J. 1959. *Business Behaviour, Value and Growth*, MacMillan.
- Baxter, R. 2009. Brief Overview of the Mining Industry. Chamber of Mines, Johannesburg.
- Bebchuk, L. A, Kraakman, R and Triantis, G. 2000. “Economic Effects of Concentrated Corporate Ownership, Stock Pyramids, Cross Ownership and Dual Cross Equity: The Mechanism and Agency Costs of Separating Control from Cash Flow Rights”. In Randall K M (Eds.). *Concentrated Corporate Ownership*. University of Chicago Press.
- BEECom. 2001. *The Black Economic Empowerment Commission Report*. Black Economic Empowerment Commission, Johannesburg: Skotaville Press.
- Belkhir, M. 2005. “Board Structure, Ownership Structure and Firm Performance: Evidence from Banking”. Laboratoire d’Economie d’Orleans, University of Orleans, France.
- Beresford, A. 2015. “Power, Patronage and Gatekeeper Politics in South Africa”. <http://afraf.oxfordjournals.org/content/early/2015/02/03afraf.ac>.
- Bergmann, B. R. 1996. *In Defence of Affirmative Action*. New York: Basic Books.
- Berle, A. A Jr and Means G. C. 1932. *Modern Corporation and Private Property*. New York: Commerce Clearing House, Inc.
- Bhattacharyya S and Holder, R., 2009. Natural Resources, Democracy and Corruption. *Oxcarre Research Paper* No.20.
- BHB Billiton Plc. 2010. *Annual Report*. Johannesburg
- BHB Billiton Plc 2011. *Annual Report*. Johannesburg.
- BHB Billiton Plc 2012. *Annual Report*. Johannesburg.
- Black, Thomas R. 1999. *Doing Quantitative Research in the Social Sciences*. London: Sage Publications.

Blaikie, Norman. 2000. *Designing Social Research: The Logic of Anticipation*. Oxford: Blackwell Publishers.

Blair, M.M. 1995. *Ownership and Control: Rethinking Corporate Governance for the 21st Century*, Washington: The Brookings Institute.

Blundell, J and Robison, C. 2000. "Regulations Without the State: The Debate Continues". Sussex: The Institute of Economic Affairs.

Bond, P. 2000. *Elite Transition: From Apartheid to Neoliberalism in South Africa*. London: Pluto Press.

Boone, A.L, Field, L.C, Karpoff, J.F and Raheja, C.G. "The Determinants of Corporate Board Size and Composition: An Empirical Analysis". October 17, 2005; Version 3-0-23.

Booth, D and Mutebi, F.G. 2012. "Developmental Patriamonialism? The Case of Rwanda". *African Affairs*, Vol.111, 444.

Botha, S. 2008. "The Art of BEE Transaction Financing". [http://www.bowman.co.za/Law Articles](http://www.bowman.co.za/Law%20Articles).

Braun, V and Clarke, V. 2006. "Using Thematic Analysis in Psychology". *Qualitative Research in Psychology*. Vol.3, 2.

Bruce, David. 2015. Summary and Analysis of the Report of the Marikana Commission of Inquiry. Council for Advancement of the South African Constitution. <http://www.casac.org.za>. Accessed. 23/March/2015.

Brunnschweiler, C. N and Bulte, E. H. 2009. "Natural Resources and Violent Conflict: Resource Abundance, Dependence and on Set of Civil Wars". *Oxcarre Research Paper* No. 18.

Bryman, A and Cramer, D. 1990. *Quantitative data Analysis for Social Scientists*. London: Rutledge.

Bull, W. L. 2007. "Black Economic Empowerment and Funding Mechanisms". In Mangcu, X et al, *Visions of Black Economic Empowerment*. Human Sciences Research Council, Pretoria.

Burton, A and Hoawthorne, S. 2007. SA's Booming Middle Class. *South Africa Information*, May 24.

Busacca, M. 2013. Corporate Social Responsibility in South Africa's Mining Industry: Redressing the Legacy of Apartheid. CMC Senior Thesis Paper 632.

Business Map: *Empowerment 2001: Better Outcomes*. Johannesburg

Business Map. 2005. *BEE 2005: Behind the Deals*. Business Map Foundation, Johannesburg.

Buttler, A. 2007. "Black Economic Empowerment since 1994: Diverse Hopes and Differentially Fulfilled Aspirations" (Mimeo).

Cameron, P. C. 2011. An Investigation into Ownership Concentration and Financial Performance of Listed South African Industrial Companies, M.A Dissertation, Gordon Institute of Business Sciences, University of Pretoria.

Campbell, B. 2009. *Mining in Africa: Regulations and Development*. Ottawa, International Development Research Centre.

Campbell, B. 2013. *Modes of Governance and Revenue Flows in African Mining*. Palgrave Macmillan.

Capps, G. 2012. "A Bourgeois Reform with Social Justice? The Contradictions of the Minerals Development Bill and Black Economic Empowerment in the South African Platinum Industry". *Review of Political Economy*, Vol. 39, 132.

Cargill, J. 2010. *Trick or Treat: Rethinking Black Economic Empowerment*. Jacana Media.

Carmody, P. 2012. "Between Globalization and (Post) Apartheid: The Political Economy of Restructuring in South Africa". *Journal of Southern African Studies*. Vol. 28, 2.

Carroll, B. 2004: "Black Economic Empowerment". In *The Mail and the Guardian*

Cauley, Troy. 1968. *Economics: Principles and Institutions*. Seranton, Pennsylvania. International Textbook Company.

Cawood, F.T, Kangwa, S, Macfarlane, A.S. and Minnitt, RCA. 2001. "Mining, Minerals and Economic Development and the Transition to Sustainable Development in Southern Africa". University of the Witwatersrand. Johannesburg.

Cawood, F and Minnitt, R.C.A, 1998. "A Historical Perspective on the Economics of Ownership of Mineral Rights". *Journal of the South African Institute of Mining and Metallurgy*. Vol. 98, No. 7.

Cawood, F and Minnitt, R.C.A. 2004. "The Mineral and Petroleum Resources Development Act of 2002: A Paradigm Shift in Mineral Policy in South". *Journal of the South African Institute of Mining and Metallurgy*. Vol. 104, No. 1.

Cawood, F and Minnitt, R.C.A. 2005. "Social Change through Mineral Law in South Africa". Annual Mining Summit, Centre for Energy, Petroleum and Minerals Law and Policy, University of Dundee, London, June.

Central Rand Gold. 2010. *Annual Report*. Johannesburg.

Central Rand Gold. 2011. *Annual Report*. Johannesburg.

Central Rand Gold. 2012. *Annual Report*. Johannesburg.

Chabane, P, Golstein, A and Roberts, S. 2006. "The Changing Face and Strategies of Big Business in South Africa More than a Decade of Political Democracy", *Industrial and Corporate Change*, Vol. 15. 3.

Chalmers, J. 1982. *MITI and the Japanese Miracle*. California: Stanford University Press.

Chamber of Mines. 1995. *Mineral Policy in the New South Africa*. Johannesburg.

Chamber of Mines. 2008a. *Facts and Figures: BEE Deals in the Mining Sector*. Johannesburg.

Chamber of Mines. 2008b. *South African Mining Industry Overview*. Johannesburg

Chamber of Mines. 2009. *Annual Report*. Johannesburg.

Chamber of Mines. 2009. Mining: An In depth Discussion on Mining Issues in South Africa. March.

Chamber of Mines. 2010. *Annual Report*. Johannesburg.

Chamber of Mines. 2011. A New Generation Mining Industry Focused on Positive Contribution to the South African Developmental State: Submission to the ANC Committee On State Intervention in the Mining Sector (SIMS). September.

Cilliers, J. and Dietrich, C. 2000. "Angola's War Economy: The Role of Oil and Diamonds", Institute of Security Studies, Pretoria.

Cliffe Dekker Hofmeyer, 2010. "The Revised Mining Charter 2010". *Mining Matters*, Spring.

Cliffe Dekker Hofmeyer, 2010. "A Comparative Analysis of the Revised Charter: Stakeholder Declaration (2010). "The 2002 Charter and the Code of Good Practice". *Mining Matters*, Spring.

Cliffe Dekker Hofmeyer, (ND.). "The Ins and Outs of Structuring BEE Deals in South Africa". <http://www.cliffdekkerhofmeyer.com/newpets/index.htm>. Accessed 5 February 2011.

Cliffe Dekker Hofmeyer, (ND.). "The Way to BEE: A guide to broad-based black economic empowerment in South Africa". <http://www.cliffdekkerhofmeyer.com/newpets/index.htm>. Accessed 5 February 2011

Coal of Africa. 2011. *Annual Report*. Johannesburg.

Coal of Africa. 2012. *Annual Report*. Johannesburg.

Cohen, T. 2012. *A Piece of the Pie: The Battle over Nationalization*. Jonathan Ball Publishers.

Collard, D. 1972. *Prices Markets and Welfare*. London: Faber & Faber.

Competition Tribunal of South Africa. 2002. Rustenburg Platinum Mines and Eastern Platinum Mines Ltd: Pandora Joint Venture, Case No. 55/LM/August 2002.

Competition Tribunal of South Africa. 2006. Panahalo Investments (Pty) Ltd and De Beers Consolidated Mines Holdings, Case doc. 12/LM/Feb. 06.

Competition Tribunal of South Africa. 2007. Xstrata South Africa (Pty) Ltd and Eland Platinum Holdings, Case No 87/LM/August 07.

Cronin, J. 2009. "Should we Nationalise the Mines?" *Umsebenzi Online*, Vol. 20. No. 18.

Crow, G and Wiles R. 2008. "Managing Anonymity and Confidentiality in Social Research: The Case of Visual Data in Community Research". ESRC National Centre for Research Methods, Working Paper Series 8/88.

CSR International. 2008. *Sustainability Report*. Johannesburg.

Cubin, J and Leech, D. 1983. "The Effects of Shareholding Dispersion on the Degree of Control in British Companies: Theory and Measurement". *The Economic Journal*, Vol. 93, No. 370.

Cycyota, C and Harrison D. 2006. "What (Not) to Expect when Surveying Executives of Top Managers Response Rates and Techniques over Time". *Organisational Research Methods*, Vol. 9, 2.

Dahya, J, Dimitrov, O and McConnell, J.J. 2009. "Does Board Independence Matter in Companies with a Controlling Shareholder". *Journal of Applied Corporate Finance*. Vol. 21, No. 1.

Daily, C, Dalton, D. R and Cannella A. A. 2003. "Corporate Governance: Impact of Board Composition and Structure". *Academy of Management Journal*. Vol. 28.

Daniels, S.L. 2010. The Impact of Economic Down Turn on Black Economic Empowerment and Banks. MBA Thesis, Nelson Mandela Metropolitan University.

Dansereau, S. 2005. "Win-win or New Imperialism? Public-private Partnerships in African Mining". *The Review of African Political Economy*. No.103.

De Beers Consolidated Mines. 2009a. *De Beers in South Africa*. Johannesburg.

De Beers Consolidated Mines. 2009b. *The Future*. Johannesburg.

De Beers Consolidated Mines. 2009. *Report to Society*. Johannesburg.

De Beers Consolidated Mines. 2010. *Annual Report*. Johannesburg.

De Beers Consolidated Mines. 2011. *Annual Report*. Johannesburg.

De Villiers, W. J. 1974. *The Effective Utilization of Human Resources in the Republic of South Africa*, General Mining and Finance Corporation, Johannesburg.

Delange, J. 2009. "Black Economic Empowerment: A Festering Sore". <http://www.miningmix.com/opinion/columnist/jan-de-lange/188443/htm>. Accessed 7 November 2010.

Demsetz, H and Lehn, K. 1985. "The Structure of Corporate Ownership: Causes and Consequences". *Journal of Political Economy*, Vol. 93, No. 6.

Denzin, N.K and Lincoln, Y.S. 2011 (eds.). *The Sage Handbook of Qualitative Research*. California, Sage.

Department of Agriculture and Forestry. 2008. *The Forestry Sector Charter*. Pretoria.

Department of Agriculture and Forestry. 2008. *The Agricultural Sector Charter*, Pretoria.

Department of Environmental Affairs. 2005. *Tourism BEE Charter*. Pretoria

Department of Finance. 1996. Growth, Employment and Redistribution: A Macro Economic Strategy. <http://www.treasury.gov.za>. Accessed 20 October 2009.

Department of Finance. 2007. *Financial Sector Charter*. Pretoria.

Department of Finance. 2011. Budget Speech, Cape Town.

Department of Minerals and Energy. 1994. *Draft Principals on which a Mining Policy for South Africa should be Based*. Pretoria.

Department of Minerals and Energy. 1995. *Discussion Document on a Minerals and Mining Policy for South Africa*. Pretoria.

Department of Minerals and Energy. 1998a. *Green Paper: A Mineral and Mining Policy for South Africa*. Pretoria.

Department of Minerals and Energy. 1998b. *White Paper: A Minerals and Mining Policy for South Africa*. Pretoria.

Department of Minerals and Energy. 2002a. *Score Card for the Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry*. Pretoria.

Department of Minerals and Energy. 2002b. Draft Mineral and Energy Policy. <http://www.anc.org.za/ancdocs/policy/minem.htm>: 4. Accessed 10 October 2010.

Department of Minerals and Energy. 2003. *Review of the Dolomite and Limestone industry in South Africa*. Pretoria.

Department of Minerals and Energy. 2005a. *Ferrous Mineral Commodities in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2005b. *The Kaolin Industry in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2005. *Bentonite, pyrophyllite and talc Companies*. Pretoria.

Department of Minerals and Energy. 2006. *South Africa's Diamond Handbook and Operating Diamond Mines Directory*. Pretoria.

Department of Minerals and Energy. 2007a. *Producers of Non Ferrous Metal Commodities in South Africa*. Pretoria.

Department of Minerals and Energy. 2007b. *Platinum Group Metal Mines in South Africa*. Pretoria.

Department of Minerals and Energy. 2007c. Provision of Export Facilities for BEE at the Richards Bay Coal Terminal. Pretoria.

Department of Minerals and Energy. 2007d. *Structure of the Salt Industry in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2007e. *Operating Mines and Quarries and Mineral Processing Plants in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2008a. *Operating Gold Mines and Recovery Plants in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2008b. *Operating and Developing Black Empowerment Companies in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2008c. *Overview of the South Africa's Mineral Based Fertilizer Industry*. Pretoria.

Department of Minerals and Energy. 2008d. *An overview of South Africa's vanadium industry during the period 1997 – 2006*. Pretoria.

Department of Minerals and Energy. 2009a. *Operating and Developing Coal Mines in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2009b. *South Africa's Mineral Industry 2008/9*. Pretoria.

Department of Mineral Resources. 2009a. *Special Clays Industry in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2009c. *Mining Charter Impact Assessment Report*. Pretoria.

Department of Minerals and Energy. 2009d. *South Africa Mining Industry Report*. Pretoria.

Department of Minerals and Energy. 2010a. Presentation to the Parliamentary Select Committee on Finance: Mining Charter Impact Assessment. Cape Town, 12 October.

Department of Minerals and Energy. 2010b. *SAMI Annual Report 2009/2010*. Pretoria.

Department of Minerals and Energy. 2010c. *Operating and Developing Black Empowerment Mining Companies in the Republic of South Africa*. Pretoria.

Department of Minerals and Energy. 2010d. *Operating and Developing Coal Mines in South Africa*. Pretoria.

Department of Minerals and Energy. 2010e. *Operating and Developing Gold Mines in South Africa*. Pretoria.

Department of Minerals and Energy. 2010f. *Producers of Non Ferrous Metals Commodities in South Africa*. Pretoria.

Department of Minerals and Energy. 2010g. *Platinum Group Metal Mines in South Africa*. Pretoria.

Department of Minerals and Energy. 2010h. *Diamonds Handbook and Operating Diamond Mines in South Africa*. Pretoria.

Department of Minerals and Energy. 2010i. *An Analysis of South Africa's Mining Contribution to the National Economy*. Pretoria.

Department of Minerals and Energy. 2010j. *Black Ownership in the Platinum Group Metals (PGM) Industry: Facts and Figures*. Pretoria.

Department of Minerals and Energy. 2010k. *Management Control and Employment in the Mining Industry: Facts and Figures*. Pretoria.

Department of Minerals and Energy. 2010l. *Amendment of the Broad Based Socio Economic Empowerment Charter for the South African Mining and Minerals Industry*. Pretoria.

Department of Minerals and Energy. 2011a. *Producers of Ferrous Mineral Commodities in South Africa*. Pretoria.

Department of Minerals and Energy. 2011b. *Annual Report 2010/2011*. Pretoria.

Department of Minerals and Energy. 2011c. *A Beneficiation Strategy for the Minerals Industry of South Africa*. Pretoria.

Department of Science and Technology. 2008. *ICT Charter*. Pretoria.

Department of Trade and Industry. 2003a. *South Africa's Economic Transformation: A Strategy for a Broad based Black Economic Empowerment*. Pretoria.

Department of Trade and Industry. 2003c. Report of the Policy Forum on Black Economic Empowerment (BEE) and Opportunities for South African Women Entrepreneurs. Gauteng: Sandston Convention Centre, Gauteng 13 June.

Department of Trade and Industry. 2004. *The Codes of Good practice on Broad Based Economic Empowerment, Draft for Comment*. Pretoria.

Department of Trade and Industry. 2005. *The Codes of Good Practice On Broad Based Economic Empowerment – Phase One: A Guide to Interpreting the First Phase of the Codes*. Pretoria.

Department of Trade and Industry. 2007a. *Codes of Good Practice for Broad Based Black Economic Empowerment – B-BBEE*. Pretoria.

Department of Trade and Industry. 2007b. Guidelines: Equity Equivalent Investment Programme for Multinationals, Pretoria.

Department of Trade and Industry. 2007c. Guidelines: Monitoring and Evaluation for Equity Equivalent Investment Programmes. Pretoria.

Department of Trade and Industry. 2007d. *B-BBEE Progress Baseline Report*. Pretoria.

Department of Trade and Industry. 2012. Memorandum on the Objectives of the Broad-Based Black Economic Empowerment Amendment Bill, Pretoria.

Department of Transport. 2004. *Maritime and Transport Sector Charter*. Pretoria.

Department of Transport. 2008. *Integrated Transport Sector Charter*. Pretoria.

- Desender, K.A. 2009. The Relationship between Ownership Structure and the Role of the Board. V.K Zimmerman Centre for International Education and Research in Accounting. University of Illinois, Working Papers.
<http://www.business.Illinois.edu/workingpapers/papers/09>. Accessed 10 May, 2011.
- Drake, W.A and Holsworth, R.D. 1996. *Affirmative Action and the Stalled Quest for Black Progress*. University of Illinois Press.
- DRDGold. 2010. *Annual Report*. Johannesburg.
- DRDGold. 2011. *Annual Report*. Johannesburg.
- DRDGold. 2012. *Annual Report*. Johannesburg.
- Du Plessis, S. 2011. "Nationalizing South Africa's Mines: Back to a Prosperous Future or Down a Rabbit Hole". Presidential address to the Biennial Conference of the Economic Society of South Africa, Stellenbosch, 5-7 September.
- Duncan, R, 1996. "Prospects for the Development of a Black Middle Class in South Africa". *The Journal of Modern African Studies*. Vol. 34, No. 4.
- Eastern Platinum. 2010. *Annual Report*. Johannesburg.
- Eastern Platinum. 2011. *Annual Report*. Johannesburg.
- Eastern Platinum. 2012. *Annual Report*. Johannesburg.
- Edigheji, O. 2000. "Rethinking BEE in Post-Apartheid South Africa".
<http://www.tips.org.za>. Accessed 10 January 2008.
- Edigheji, O. 2005. "Tracing the Evolution of Black Economic Empowerment in South Africa". <http://www.tips.org.za>. Accessed 10 April 2008.
- Economic Commission for Africa. 2011. *Minerals and Africa's Development: The International Study Group Report on Africa's Mineral Regime*. Addis Ababa.
- Empowerdex. 2004. *The State of Black Economic Empowerment in the Mining Sector*. Johannesburg.
- Empowerdex. 2009. A Summary of the BEE Transactions in the Mining Sector 2004 – 2008. Johannesburg.
- Emsley, I. 1996. *The Malaysian Experience of Affirmative Action: Lessons for Africa*. Cape Town, Tafelberg Publishers Ltd.
- Engelbrecht, H. 2007. "Mechanism for Financing BEE Transactions". Standard Bank Presentation at Mine Africa's BEE Seminar, November.

Ernest and Young. 2011. *Africa: A Golden Opportunity: A Spotlight on Mining and Metals Transactions*. Johannesburg.

Ernest and Young. 2011. *African Mining Investment Environment Survey*. Johannesburg.

Eastern Platinum. 2010. *Annual Report*. Johannesburg.

Exxaro. 2010. *Integrated Annual Report*. Johannesburg.

Exxaro. 2011. *Annual Report*. Johannesburg.

Exxaro. 2012. *Annual Report*. Johannesburg.

F.W. De Klerk Foundation. 2005. "Black Economic Empowerment in South Africa". <http://www.fwdeklerk.org.za>. Accessed 12 July 2008.

Falkena, H.B. 1979. *The South African State and its Entrepreneurs*. A.D. Bonker Publisher.

Farrell, L.A, Hamman, R and Marckres, E. 2012. "A Clash of Cultures (and Lawyers): Anglo Platinum and Mine Affected Communities in Limpopo Province, South Africa". *Resource Policy*, 32.

Fauconnier, A and Mathur H. B. 2008. "Black Economic Empowerment in the South African Mining Industry: A Case Study of Exxaro Limited". *South African Journal of Business Management*, Vol. 34, No. 4.

Feinstein, C. 2005. *An Economic History of South Africa*. Cambridge University Press.

Financial Mail/Empowerdex. 2004. *Top Empowerment Companies*. Johannesburg.

Fine, B and Rustomjee Z. 1996. *The Political Economy of South Africa: From Minerals Energy Complex to Industrialization*. West View Press.

First National Bank. 2006. "Black Economic Empowerment in South Africa". http://www.fnb.co.za/economic/econhtmldocs/BEE_coll.pdf. Accessed 5 October 2008.

Fontana, J and Frey, J.H. 2011. "Interviewing: The Art of Science". In Denzin, N.K and Lincoln, Y.S (Eds). *The Sage Handbook of Qualitative Research*. California, Sage.

Foskor. 2010. *Annual Report*. Johannesburg.

Freud, B. 2007. "South Africa: The End of Apartheid and the Emergence of the BEE Elite". *Review of African Political Economy*, Vol. 34, No. 114.

- Freyberg, P., 2005. "Xstrata Coal South Africa". Johannesburg.
- Garande, I. 2008. "Tanzania Should Learn from Zimbabwe's indigenization laws-CTI". <http://www.talkzimbabwe.com/news/177/ARTICLE/2984/> Accessed 20 July 2008.
- George, C and West, C. (Eds.). 1996. *The Affirmative Action Debate*. NY, Perseus.
- Gervisser, M. 2009. *The Dream Deferred: Thabo Mbeki*. Jonathan Ball Publishers.
- Glover, SI and Thamodaran, AS. 2013. Debating the Pros and Cons of Dual Class Capital Structures. *Insights: The Corporate & Securities Law Advisor*. Vol. 27, No 3.
- Gold Fields. 2009. *Annual Report*. Johannesburg.
- Gold Fields. 2010. *Annual Report*. Johannesburg.
- Gold Fields. 2010. *Circular to Shareholders*. Johannesburg.
- Gold Fields. 2011. *Annual Report*. Johannesburg.
- Gold Fields. 2012. *Annual Report*. Johannesburg.
- Gold One International. 2011. *Annual Report*. Johannesburg.
- Goliath Gold Mining Ltd. 2011. *Annual Report*. Johannesburg.
- Goliath Gold Mining Ltd. 2012. *Annual Report*. Johannesburg.
- Göteborg University. 2001. Black Economic Empowerment: An Introduction for non-South African Businessman. Department of Law, Master of Law Programme.
- Gqubule, D. (Ed.). 2006. *Making Mistakes, Righting Wrongs: Insights into Black Economic Empowerment*. Jonathan Ball Publishers.
- Gregory, P.R and Stuart, R.C. 1995. *Comparative Economic Systems*. 5th Edition. Boston: Houghton Mifflin.
- Gregory, T. 1962. *Ernest Oppenheimer and the Economic Development of Southern Africa*. Oxford University Press.
- Hall, R. 2010. "A Political Economy of Land Reform in South Africa". *Review of African Political Economy*. Vol. 31, 100.
- Halse, F.E. 1982. "Ownership and Control of Large Companies in the RSA". *Investment Analyst Journal*. No 20, June.
- Hammann, R., and Kapelus, P. 2004. Corporate Social Responsibility in Mining in Southern Africa: Fair Accountability or Just Greenwash? *Development*. Vol. 47. No3

- Hamman, R, Khargram S and Rohan S, 2008. "South Africa's Charter Approach to Post Apartheid Economic Transformation: Collaborative Governance or Hardball Bargaining". *Journal of Southern African Studies*. Vol. 34, No. 1.
- Handley, J.R.F. 2004. Chapter 2: The Gold Mining Industry. http://www.goldinsouthafrica.com/pdfs/chapter_2pdf. Accessed February 25, 2009.
- Handly, A. 2008. *Business and State in Africa: Economic Policy Making in the Neoliberal Era*. Cambridge University Press.
- Hardy, M and Bryman, A. 2004. *Handbook of data analysis*. London: Sage Publications.
- Harmony Gold Mining Co. 2009. *Annual Report*. Johannesburg.
- Harmony Gold Mining Co. 2010. *Annual Report*. Johannesburg.
- Harmony Gold Mining Co. 2011. *Annual Report*. Johannesburg.
- Harmony Gold Mining Co. 2012. *Annual Report*. Johannesburg.
- Hart, G. 1994. "The New Economic Policy and Redistribution in Malaysia: A Model for Post-Apartheid South Africa". *Transformation*. Vol. 23.
- He, E and Sommer, D. 2006. *Separation between Ownership and Control, Implications for Board Composition*. University of North Texas and University of Georgia.
- Hennink, M, Hutter, I and Bailey, A. 2010. *Qualitative Research Methods*. London. Sage.
- Herbert, J.1998. *Affirmative Action in Namibia: Redressing the Imbalances of the Past*. Windhoek, New Namibia Books.
- Hirsh, A. 2005. *Seasons of Hope, Economic Reform under Mandela and Mbeki*. University of Kwazulu Natal Press.
- Hocking, A. 1973. *Oppenheimer and Son*. McGraw Hill.
- Holderness, C.G., 2003. "A Survey of Blockholders and Corporate Control". *FRBNY Economic Policy Review*.
- Hughes, A. 1998. *Achieving Industrialization in East Asia*. Cambridge University Press.
- Idasa. 2003. "Black Economic Empowerment: Addressing Social Economic Inequality in South Africa". *Epoliticssa*. Vol. 2.

Industrial Development Corporation (IDC). 2013. *Economic Overview: Recent Developments in the global and South African Economics*. Johannesburg.

International Development Research Council (IDRC). 2004. *From Kliptown to the RDP: The Evolution of the ANC's Economic Policy*. <http://www.idrc.ca/en/ev-91108-201-1-1-DO=Topic.html> Accessed 12 January 2009.

Iheduru, O. C. 2004. "Black Economic Empowerment and Nation Building in Post-Apartheid South Africa". *Journal of Modern African Studies*. Vol.1. No. 9.

Iheduru, O. C. 2008. "Why Anglo Licks ANC's Boots: Globalization and State Capital Relations in South Africa". *African Affairs*. Vol. 107. No. 428.

Impala Platinum (Implats). 2010. *Annual Report*. Johannesburg.

Impala Platinum (Implats). *Annual Report*. Johannesburg.

Impala Platinum (Implats). 2012. *Annual Report*. Johannesburg.

Innes, D.1983. *Aspects in Monopoly Capitalism in South Africa*. African Studies Institute, University of the Witwatersrand.

Institute of Directors of Southern Africa. 1994. King I Report on governance for South Africa 1994. www.iodsa.co.za/products_reports.asp?CatID=151. Accessed 5 July, 2010

Institute of Directors of Southern Africa. 2002. King II Report on Governance for South Africa 2002. www.iodsa.co.za/products_reports.asp?CatID=245. Accessed 5 July, 2010.

Institute of Directors of Southern Africa. 2009. King III Report on Governance for South Africa. www.iodsa.co.za/products_reports.asp?CatID=150 Accessed 5 July, 2010.

Iwuagwu, O. 2009. "Nigeria and the Challenge of Industrial Development: The New Cluster Strategy". *African Economic History*. Vol. 37.

Jack, V. 2007a. *Broad Based BEE: The Complete Guide*, Frontrunner Publishing, Johannesburg.

Jack, V. 2007b. "Unpacking the Different Waves of Black Economic Empowerment". In Mangcu, X et al, *Visions of Black Economic Empowerment*, Human Sciences Research Council.

Jesudason, J.V. 1990. *Ethnicity and the Economy: The Chinese Businesses and the Multinationals in Malaysia*. Oxford University Press.

Johnson, A.G and Lawson, A.O. 1987. *Growth, Equity and Self Reliance: Private Enterprises and African Economic Development*. Colorado: West View Press.

Johnson, C. 2008. "The Role of SAMDA in Junior Mining in South Africa". *Mining Summit*, NASREC, September.

Jomo, K. S. (ND). "State Intervention, Corporate Governance and Industrial Relations in Malaysia". http://www.jomoks.org/reseach/pdf/state_intervention.pdf. Accessed 5 July 2010.

Jones, F. S. 2010. "Minerals and Energy Policy". In Jones F. S and Vivian R (Eds). *South African Economy and Policy 1990-2000: An Economy in Transition*. Manchester University Press.

Judin, J. M. 2003. "Corporate Governance in South Africa". *Corporate Board Member Magazine*, <http://www.boardmember.com>. Accessed 28 December 2008.

Kantor, B, 1998. "Ownership and Control in South Africa under Black Rule". *Journal of Applied Corporate Finance*. Vol. 10. No. 4.

Kaplan, E.J. 1972. *Japan: The Government and Business Relationship: A Guide for American Businessman*. U.S Department of Commerce.

Keaton Energy Holdings Ltd. 2010. *Annual Report*. Johannesburg.

Kekana, M. 2009. "BEE Funding Instruments are in Need of a Major Overhaul". *Empowerdex*. Vol. 28. No. 2, June.

Kelsall, T. 2013. *Business, Politics and the State in Africa: Challenging the Orthodoxies on Growth and Transformation*. London, Zed Press.

Kenny, B and Mather, C. "Milking the Region? South African capital and Zambia, Dairy Industry". <http://www.thezimbabwean.co.uk/index.php?option=com-content&view>. Accessed 6 July 2008.

Kgosi Leruo Molotlegi. 2013. "The Bafokeng Direct Community Participation in Mining Ventures". Paper presented at the mining and infrastructure indaba, Harare 25-27 September. <http://www.bafokeng.com/media/press/bafokeng-nation-south-africa-example-direct.c>. Accessed 20/9/2015.

Khan, A.E. 1993. *The Economics of Regulations, Principles and Institutions*. Massachusetts Institute of Technology.

Khan, M.H and Gray, H. 2005. "State Weakness in Developing Countries and Strategies of Institutional Reform – Operational Implications for Anti-corruption Policy and a Case Study of Tanzania". Report Commissioned by the Department for International Development (DFID).

Khehla, S and Reddy, C. 2007. *Empowerment and its Critics*. Business Map Foundation.

Khehla S and Reddy C. *BEE 2006, Charters and Deals*. Business Map Foundation

KIO Advisory Services. 2010. Management Control and Employment Equity in the Mining Industry: Draft Report for Public Comment 2010. A Study Commissioned by SAMDA (South African Mining Development Association).

Klein, M 2008. "SA's dollar millionaire club gets bigger". *Sunday Times and Business Times*. June 29 pp1.

Kloppers H J and Pienaar G.J. 2014. "The Historical Context of Land Reform in South Africa and Early Policies". PER Vol.17, 2.

Knight Richard: 2001. "South Africa: Economic Policy and Development". [Http://richardknight.homestead.com/files/sisaseconomy.htm](http://richardknight.homestead.com/files/sisaseconomy.htm) Accessed 15 December 2009.

Kohl, A. 2004. *State Directed Development: Political Power and Industrialisation in the Global Periphery*. Cambridge University Press.

KPGM. 2007. *BEE Survey, Making Economic Sense of Empowerment*. Johannesburg.

KPGM. 2009. *BEE Survey: Are we there Yet*. Johannesburg.

KPGM. 2010. *The Evolution of BEE Measurement, 2010 BEE Survey*. Johannesburg.

KPGM. 2011. *A Time for Transformational Leadership, 2011 BEE Survey*. Johannesburg.

Kumba Iron Ore Limited. 2010. *Financial Statements*. Johannesburg.

Kumba Iron Ore Limited. 2011. *Annual Report*. Johannesburg.

Kumba Iron Ore Limited. 2012. *Annual Report*. Johannesburg.

LaRRI and NUNW 2003. Black Economic Empowerment: Developing a Workers Perspective. [Http://www. Larri.com.na/papers/BEE](http://www.Larri.com.na/papers/BEE). Accessed 23 March 2007.

Lall, S. 1996. *Learning from the Asian Tigers: Studies in Technology and Industrial Policy*. MacMillan Press.

Lange, G.M. and Wright, M. 2002. Sustainable Development in Mineral Economies: The Example of Botswana. Centre for Environmental Economics and Policy in Africa, University of Pretoria.

La Porta, R., De Silanes, F.L. and Shleifer, A. 1999. "Corporate Ownership around the World". *Journal of Finance*. 54, No. 2.

Laubscher, J. 2011. "State Intervention in the Mining Sector". Sanlam.

Law Development Commission. 2007. Zimbabwe Indigenization and Economic Empowerment Act 14/2007,

Law Werks. 2003. "Black Economic Empowerment: An Update". Vol. 14. June 2003.

Leech, D. 2002. "Shareholder Voting Power and Ownership and Control of Companies". *Warwick Economic Research Paper* No. 564, University of Warwick.

Legard R., Keegan K and Ward K. 2003. "In-depth Interview". In Ritchie J and Lewis J (eds.) *Qualitative Research Practice*. Sag London.

Lehn, K, Sukesh, P and Zhao, M. 2003. "Determinants of the Size and Structure of Corporate Boards. 1935-2000". Working Paper, Katz Graduate School of Business.

Leon, P. 2007. Understanding the Key Elements of BEE: Charters, Scorecards and Codes of Good Practice in the Mining Industry.

Leon, P. 2010. "Creeping Expropriation of Mining Investments: An African Perspective". Address to the Rocky Mountain Mineral Law Foundation, International Mining and Oil and Gas Law, Development and Investment, Buenos Aires, April.

Leon, P. 2010. "International Best Practices and Resource Nationalism: The International Bar Association's Model Mine Development Agreement". *Journal of the Southern African Institute of Mining and Metallurgy*. Vol. 111.

Leon, P. 2012. "Wither the South African Mining Industry?" *Journal of Energy and National Resources Law*. Vol. 30.1.

Leslie, R. 1976. "Nationalization and Indigenization in Africa". *Journal of Modern African Studies*. Vol. 14.

Lester, K, 2007. "The Regulatory Framework of Black Economic Empowerment". In Mangcu, X et al, *Visions of Black Economic Empowerment*, Human Sciences Research Council.

Lewis. 2001. "Reaching for the Economic Kingdom: Black Economic Empowerment and Small and Medium Business Development". http://www.idrc.ca/en/ev-91108-201-1-DO_TOPIC.html Accessed 25 September 2009.

Levitt, D. 2005. "Structuring Black Economic Empowerment (BEE) Transactions in the Mining Sector in South Africa". Fasken Martineau DuMaulin LLP, Barristers and Solicitors.

Lewis. 2007. "Financing Options for BEE Companies". Mine Africa Seminar on Black Economic Empowerment in the South African Mining Industry, London, November.

Lipsey, R. D. 1989. *An Introduction to Positive Economics*. London: English Books Society. 7th Edition.

Lonmin Plc. 2010. *Annual Report and Accounts*. Johannesburg.

Lonmin Plc. 2011. *Annual Report*. Johannesburg.

Lonmin Plc. 2012. *Annual Report*. Johannesburg.

Lucky, E.O. 2011. "Nurturing Entrepreneurship Development in the 21st Century: Practical Approaches". *International Journal of Humanities and Social Science*. Vol. 1, 9.

Luhabe, W. 2007. "The Moral Bases of a Stakeholder Society". In Mangcu, X et al, *Visions of Black Economic Empowerment*. Human Sciences Research Council.

Luong PJ and Weinhal E. 2013. *Oil is Not a Curse: Ownership and Institutions in Soviet Successor States*. Cambridge University Press.

Lynch, G. 2012. "The Economic is Political and the Political is Economic: Protest, Change and Continuity in Contemporary Africa". *Review of Africa Political Economy*. 39, 134.

M'Paradzi, A and Kalula E, 2007. "Black Economic Empowerment in South Africa: An Appraisal". Institute of Development and Labour Law, University of Cape Town.

Mabasa, Lelety. 2007. "Zimbabwe's Planned National Indigenization and Empowerment Bill: Disaster for the Country's Economic Infrastructure". The WIP. (The wip.net)

Mackenzie, M. 2015. "How to Work Effectively with a Research Assistant". <http://www.diccofinerva.com>. Accessed 8/7/2015.

Mackintosh, M, Brown, V, Costello, N, Thompson, G and Trigg, A. 1996. *Economics and Changing Economics*. London: International Thompson Business Press/ Open University.

Mafuna, E and Luhabe W. 2007. "Empowerment in South Africa". In Adrian C (Ed.). *Empowerment in South Africa*. Human Sciences Research Council. Pretoria.

Makholwa, P. 2008. "BEE Deals Must be Real". <http://www.citypress.co.za>. Accessed 9 June 2010.

Mail and Guardian, 6 -12 September 2013

Malherbe, S and Segal, N 2001. "Corporate Governance in South Africa". *Trade and Industrial Policy Strategies Annual Forum*, September.

- Maliyamkono, T and Mason H, 2006. *The Promise*. Dar- Es -Salaam, Tema Publishers.
- Mandla, B. 2006. BEE and Malaysia NEP: A Comparative Study. MA Dissertation, University of Stellenbosch.
- Mangcu, X, Marcus G, Khelha, S and Hadland, A. 2007. *Visions of Black Economic Empowerment*. Human Sciences Research Council.
- Marais, H. 2011. *South Africa Pushed to the Limit. The Political Economy of Change*. University of Cape Town Press.
- Marshall, I. E. 2001. "A Survey of Corruption and Issues in the Mining and Mineral Sector". International Institute for Environment and Development.
- Marvin, P. 2008. "BEE Lessons Learnt". <http://www.businessday.com>. Accessed 10 September, 2011.
- Mathe, H. 2008. "BEE Economics and Its Influence on Growth of the New South Africa". *Mine Africa BEE Seminar*, July.
- Maxozoma, S. 2007. "Black Economic Empowerment: De-Racializing the Economy". In Mangcu, X, Marcus G, Khelha, S and Hadland, A. 2007. *Visions of Black Economic Empowerment*. Human Sciences Research Council.
- Maxozoma, S. 2004. "Black Economic Empowerment: A new covenant forged in hope". *Optima*, Vol. 50, 2, May. 59.
- Mbeki, M. 2007. "Is BEE Working?" <http://allafrica.com/stories/200703231106.html> Accessed 5 March, 2009.
- Mbeki T. 1998. *Africa the Time has Come: Selected Speeches*. Jonathan Ball.
- Mbeki, T. 1999. "Challenge of the Formation of a Black Capitalist Class, a Black Bourgeoisie". Speech at the Annual National Conference of the Black Management Forum, Kempton Park, 20 November. http://www.anc.org.za/ancdocs/history/Mbeki/1999/tm_1120.htm Accessed 23 April 2009.
- Mbeki, T. 2003. State of the Nation Address. <http://www.anc.org.za/ancdocs/history/Mbeki/2003/tm0214.html> Accessed 5 March, 2009.
- Mbete, M. 2004. "BEE Funding: A Great Deal of Innovation Required". In Business Map Foundation, 2004. *Black Ownership: Risk or Opportunity*. Johannesburg.
- McGregor, T. 2006. *Who Owns Who in South Africa*. Cape Town, Juta Press.

- Means, C. G. 1930. "The Diffusion of Stock Ownership in the United States". *Quarterly Journal of Economics*. Vol.44, No. 4.
- Means, C. G. 1931. "The Separation of Ownership and Control in American Industry". *Quarterly Journal of Economics*. Vol.46, No. 1.
- Melber, H. 2013. "Africa and the Middle Class (es)". *Africa Spectrum*. Vol. 48, 3.
- Melinda V, and Ryan, LV.2006. "Corporate Governance in South Africa: A Bellwether for the Continent". *Corporate Governance: An International Review*. Vol. 14, 5.
- Merafe Resources. 2010. Investor Presentation. New York and Boston.
- Mining in South Africa. <http://www.mbendi.com/indy/mining/af/sa/p0005.htm>
Accessed 19 June 2011.
Mining News 15/5/2015.
- Miranda Mineral holdings Ltd. 2010. *Annual Report*. Johannesburg.
- Mizruchi, M.S 2005. "Berle and Means Revisited: The Governance and Power of Large US Corporations". *Theory and Practice*, April.
- Mnwana, S. 2014. "Mineral Wealth- 'in the Name of Morafe'? Community Control in South Africa's Platinum Valley". *Development Southern Africa*. Vol. 32, 6.
- Mohammed, I. 1985. The Nigerian Enterprises Promotion Decrees (1972 and 1977) and Indigenisation in Nigeria. Ph.D. Thesis, University of Warwick.
- Mohr, P and Fourie, L. 1995. *Economics for South African Students*. J.L. Van Schaik, Pretoria.
- Mohd, A. S, Salleh, M. N and Hassan, S. M. 2008. "Ownership Structure and Earnings Management in Malaysian Listed Companies: the Size Effect". *Asian Journal of Business and Accounting*. Vol. 12.
- Moloi, N. 2006. "Combating Corruption and fronting". *Building Women*, December-January issue.
- Moloi, N. 2006. 2008. "Funding Challenges for BEE". Presentation of Motjoli Resources at the 2008 Mining Summit, NASREC, Johannesburg, September.
- Molony, T and Hammett, D. 2007. "The Friendly Financier: Talking Money with the Silenced Assistant". *Human Organisation*. Vol. 66, 3.
- Murray, G, 2000. "Black Empowerment in South Africa: "Patriotic Capitalism" or a Corporate Black Wash?" *Critical Sociology*. Vol. 26, No. 3.

- Mvelaphanda Resources. 2010. *Mvelaphanda Resources Circular*. Johannesburg.
- Mwaipose, G.S. 2003. "Economic Development and the Role of the State in Botswana". *DPMN Bulletin*. Vol. X. 2.
- Mwaipose, G.S. and Matsheka, T.C. 2002. "Explaining African Growth Performance: The Botswana Case Study". University of Botswana.
- Nachimias, C and Nachimias D. 1992. *Social Research in the Social Sciences*. St. Martin's Press, London.
- Nafziger, E Wayne. 1997. *The Economics of Development Countries* (3rd ed.). Upper Saddle River, New Jersey. Prentice Hall, Inc.
- Namakwa Diamonds. 2010. *Annual Report*. Johannesburg.
- National Union of Mine Workers. 1995. *The Mining and Minerals Policy for a non-Discriminatory, Efficient and Prosperous South Africa*. Johannesburg.
- Nattrass, N. 1981. *The South African Economy: Its Growth and Change*. Oxford University Press.
- Nattrass, N and Seekings, J., 2010. "State, Business and Growth in Post-Apartheid South Africa". Institute for Pro Poor Growth, University of Manchester, IPPG Discussion Paper 34.
- Ndongko, W. A. 1980. "Indigenization Policy and the Development of Private Enterprise in Nigeria". *African Spectrum*. Vol.15, No. 1.
- Netshitenzhe, J. 2010a. "Accelerated Transformation in the Mining Sector: Limits and Opportunities". Presentation at the Mining for Change Conference, Cape Town, September.
- Netshitenzhe, J. 2010a. 2010b. "State Ownership and the National Democratic Revolution: Debating the Issue of Nationalization". *Umtabulo* No. 33.
- Netshitenzhe, J. 2010a. 2011. "A Developmental State: South Africa's Developmental Capacity". Presentation at the University of Cape Town Summer School, January.
- Nkosi M Z. 1987. "American Mining Engineers and the Labor Structure in South African Gold Mines". *The Engineering and Mining Journal*. (E&MJ) December 3, 1987, New York City
- Nkosi, S. 2007. "The South African Coal Industry – Challenges and Opportunities". *Coaltrans*, Rome.
- Northam Platinum Ltd. 2010 *Annual Report*. Johannesburg.

Northam Platinum Ltd. 2011. *Annual Report*. Johannesburg.

Northam Platinum Ltd. 2012. *Annual Report*. Johannesburg.

Northam Platinum Ltd. 2010. Northam Circular to Shareholders.

Nyamane (2005/6). "Broadening the Base: Linking HR with business strategy". *Human Capital Management* 2005/6.

Ntim C.L. and Soobaroyen, T. 2012. Black economic Empowerment Disclosures by South African Listed Corporations: The Influence of Ownership and Board Characteristics. *Journal of Business Ethics*. Vol.116

Obaji, N.O and Olugu, M.U. 2014. "The Role of Government Policy in Entrepreneurship Development". *Science Journal of Business and Management*. Vol. 2, 4.

Ogbuagu, C A. 1982. "The Nigerian Indigenization Policy: Nationalism or Pragmatism". *African Affairs*. Vol. 82. 37.

Optimum Coal. 2010a. *Annual Report*. Johannesburg.

Optimum Coal. 2010a. 2010b. Presentation at the Goldman Sachs Emerging Markets Conference, November.

Optimum Coal. 2011. *Annual Report*. Johannesburg.

Optimum Coal. 2012. *Annual Report*. Johannesburg.

Padayachee, V and Michie, J. 1998. "Three Years after Apartheid: Growth, Employment and Redistribution". *Cambridge Journal of Economics*. Vol. 22.

Palabora Mining Company Limited. 2010. *Integrated Annual Report*. Johannesburg.

Palabora Mining Company Limited. 2010. *Sustainable Development Report*. Johannesburg.

Pan African Resources Plc. 2010. *Annual Report*. Johannesburg.

Parker, D. 1989. The Importance of Ownership, SWP/10/90

Parkin Michael. 1990. Reading (USA). Addison-Wesley Publishing Company

Patel, L and Graham, L. 2012. "How Broad Based is Broad based black Economic Empowerment?" *Development Southern Africa*. Vol. 29. No. 2.

Patro, S, Lehn, K and Zhao, M. 2003. "Determinants of Size and Structure of Corporate Boards 1935 – 2000". November. Republished in 2009 in *Financial Management*. Vol. 38.

Patton, M. 2002. *Qualitative Evaluation and Research Methods*. Newsbury Park. Sage Publications.

Penrod, J, Preton, D, Cain, R. E and Starks, M.T. 2003. "A Discussion of Chain Referrals as a Method of Sampling Hard to Reach Populations". *Journal of Transnational Nursing*. Vol. 14. 2

Peter Leon Partner, Webbel Wentel Bowans. 2007. "Understanding the Key Elements of BEE: Charters, Score Cards and Codes of Good Practice". Mine Africa BEE Seminar, London.

Petmin. 2010. *Annual Report*. Johannesburg.

Petmin. 2011. *Annual Report*. Johannesburg.

Petrus Diamonds. 2010. *Annual Report*. Johannesburg.

Petrus Diamonds. 2011. *Annual Report*. Johannesburg.

Phellas, C. N, Bloch, A and Seale, C. 2011. Structured Methods: Interviews, Questionnaires and Observations. In Seale, C (ed). *Researching Society and Culture*. University of London.

Pinnock, D and Buttler, R. 2005. "The Ins and Outs of Structuring Deals in South Africa". DLA Cliffe Dekker Hofmeyer.

Platfields. 2011. *Annual Report*. Johannesburg.

Platmin (Canada). 2010. *Sustainable Investment Report*. Johannesburg.

Platmin (Canada). 2011. *Annual Report*. Johannesburg.

Platmin (Australia). 2011. *Annual Report*. Johannesburg.

Ponte, S, Roberts S, and Van Sittert. 2007. "Black Economic Empowerment, Business and the State in South Africa". *Development and Change*. Vol. 38, No.5.

Ponte, S, Roberts S, and Van Sittert. 2006. "To BEE or Not to BEE? South Africa's Black Economic Empowerment (BEE), "Corporate Governance and the State in the South". *Danish Institute for International Affairs, Working Paper* No. 2006/278.

Posner, R. A. 1974. "Theories of Economic Regulations". *The Bell Journal of Economic and Management Sciences*. Vol. 3. 2.

Pretoria News, 23 February 2010.

Pretoria News, 27 August 2010.

Pretoria News, 28 August 2010.

Pretoria News, 19 December 2012.

Pringle E, 2013. Land Reform and White Ownership of Agricultural Land in South Africa. *The Journal of Helen Suzman Foundation*. Issue 70 October 2013

Qobo, M. 2011. *The Role of the South African State in Mining*. CPR Press, Pretoria.

Raftopoulos, Brian. 2007. "Fighting for Control: 'The Indigenization Debate in Zimbabwe'". *South African Report Archive*. Vol. 11 No 4. <http://www.africafiles.org/article.asp?ID=3875> Accessed 2 October 2008

Raftopoulos, Brian. 2007 "A Strategy for Economic Empowerment". <http://www.thezimbabwean.co.uk/index.php?option> Accessed 2 October 2008

Rajak, D. 2012. Platinum City and the New South African Dream". *Africa*. Vol. 82,2.

Randall, D. J. 1996. "Prospects for the Development of a Black Middle Class in South Africa". *Journal of Modern African Studies*. Vol.34, 4.

Randall, K. M. 2000. *Concentrated Corporate Ownership*. University of Chicago Press.

Randgold and Exploration Company Ltd. 2011. *Annual Report*. Johannesburg.

Rapport News 17/9/2013.

Reid, A. 2010. "The Mining Charter and the Stakeholders' Declaration: Quo Vadis?" Cliffe Dekker Hofmeyer, Creamer Media.

Republic of South Africa. 1911. Mining and Works Act

Republic of South Africa. 1913. The Native Land Act

Republic of South Africa. 1923. The Natives (urban Areas) Act

Republic of South Africa. 1926. Job Reservation Act

Republic of South Africa. 1945. The Natives (Urban Areas) Consolidation Act.

Republic of South Africa. 1951. The Bantu Authorities

Republic of South Africa. 1952. The Native Laws Amendment Act

Republic of South Africa. 1953. The Bantu Education Act

Republic of South Africa. 1956. The Industrial Reconciliation Act

Republic of South Africa. 1956. The Group Areas Act

Republic of South Africa. 1959. The Extension of University Act

Republic of South Africa. 1974. Rural Areas Act

Republic of South Africa. 1987. Lebowa Minerals Trust Act

Republic of South Africa. 1991. Mineral Law

Republic of South Africa. 1993. The Constitution of the Republic of South Africa, Pretoria

Republic of South Africa. 1994. Kwazulu Natal Trust Act

Republic of South Africa. 1996. The Constitution of the Republic of South Africa, Pretoria

Republic of South Africa. 1996. Mine Health and Safety Act

Republic of South Africa. 1997. The Promotion of Equality and Prevention of unfair discrimination Act.

Republic of South Africa. 1997. Extension of Security of Tenure Act

Republic of South Africa. 1997. Restitution of Land Rights Act

Republic of South Africa. 1997. National Empowerment Fund Act

Republic of South Africa. 1998. The Competition Act

Republic of South Africa. 1998. Labour Relations Act

Republic of South Africa. 1998. The Competition Act (Act 98 of 1998)

Republic of South Africa. 1998a. Employment Equity Act, (Act 55 of 1998)

Republic of South Africa. 1998b. Skills Development Act (Act 97 of 1998)

Republic of South Africa. 2000. Preferential Procurement Policy Framework Act (Act 5 of 2000).

Republic of South Africa. 2001. Black Economic Empowerment Commission Report, Stockville Press.

Republic of South Africa. 2002. The Minerals and Petroleum Resources Development Act.

Republic of South Africa. 2003. The Broad Based Black Economic Empowerment Act (Act 53 of 2003).

Republic of South Africa. 2004. Charter for the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry, Government Gazette, 4/2004.

Republic of South Africa. 2004. The Broad Based Socio Economic Empowerment Charter for the South African Mining Sector, Government Gazette No. 2666, 13/8/2004.

Republic of South Africa. 2007a. Construction Sector Charter of Black Economic Empowerment, Government Gazette No. 29616, 19/2/2007.

Republic of South Africa. 2007b. Broad Based Black Economic Empowerment Act (53/2003), Codes of Good Practice on Black Economic Empowerment, Government Gazette, 29617/2/2007.

Republic of South Africa. 2007c. Code Series 200: Measurement of the Management Control Element of Broad Based Black Economic Empowerment, Government Gazette, 2/2007.

Republic of South Africa. 2007d. Code Series 800: Codes of Good Practice for Qualifying Small Enterprises (ASE's), 2/2007.

Republic of South Africa. 2007. Broad Based Black Economic Empowerment Act Section 9(1): Codes of Good Practice Schedule, Government Gazette. 2/2007.

Republic of South Africa. 2008. The Royalty Act

Republic of South Africa. 2011. The B-BBEE Amendment Bill, Government Gazette No. 34845, 9/12/2011.

Research Channel Africa. 2006. *Black Economic Empowerment in Mining*, Creamer Media.

Research Channel Africa. 2008. *Black Economic Empowerment in Mining*, Creamer Media.

Research Channel Africa. 2008. *Platinum*, Creamer Media.

Rhee, C. 1994. *The State and Industry in South Korea: Limits of Authoritarian State*. London, Routledge.

Richards Bay Minerals. 2011. *Annual Report*. Johannesburg.

Richards Bay Minerals. 2012. *Annual Report*. Johannesburg.

Rimlinger, G.V. 1972. "Indigenisation of Industry and Progress of the Second Nigerian National Development Plan". Program of Development Studies, William Marsh Rice University, Discussion Paper.

Ritter, R and Gaomab, M. 2005. *Affirmative Action Needs Assessment Study*. Namibia Chamber of Commerce and Industry.

Robinson James A. 2009. "Botswana's Role Model for Country Success". United Nations University. Research Paper No. 2009/40

Rockwell Diamonds. 2011. *Annual Report*. Johannesburg.

Rockwell Diamonds. 2012. *Annual Report*. Johannesburg.

Roshan, B. 2009. "Capital Structure and Ownership Structure: A Review of Literature". *Journal of Online Education*. New York, January.

Rosser, A. 2006. "The Political Economy of the Resource Curse: A Literature Survey". Institute of Development Studies, University of Sussex.

Rossouw, G. J., Van Der Watt, A and Malan, D. 2002. "Corporate Governance in South Africa". *Journal of Business Ethics*. Vol. 37.

Royal Bafokeng Holdings. 2009. *Annual Report*. Johannesburg.

Royal Bafokeng Holdings. 2010. *Annual Report*. Johannesburg.

Royal Bafokeng Holdings. 2011. *Annual Report*. Johannesburg.

Royal Bafokeng Platinum. 2010. *Annual Report*. Johannesburg.

Rubio Phillip. 2001. *A history of Affirmative Action*. Oxford, University Press of Mississippi.

Romney, R. 2004. "Who owns South Africa: An Analysis of State and Private Ownership Patterns". In *State of the Nation 2004-5*. HSRC Press, Pretoria.

Rustomjee, Z. 2011. "The Role of Mining and the Minerals-Energy Complex (MEC) in the South African Economy: Trends and Outcomes". Paper Prepared for the SIMS Study.

Ryan, E. 2005. "Modifying Empowerment Dreams". *Sunday Times*, September 11.

Ryan, E. 2007. "Economic Equality is Decades Away". *Sunday Times*, September 5.

Sachs, J and Warner A. 2001. "Natural Resources and Economic Development: The Curse of Natural Resources". *European Economic Review*. 45.

Sachs, J and Warner A. 1995. "Natural Resource Abundance and Economic Growth". National Bureau of Economic Research. Cambridge, Massachusetts, NBER Working Paper 5398.

Sallies Limited. 2011. *Integrated Annual Report*. Johannesburg.

Salter, M. 2003. "Notes on Governance and Corporate Control". *Journal of Strategic Management Education*. 1(1) 5-54 2003. Senate Hall Academic Publishing.

Samuelson, P. A and Nordhaus, W. D. 1989. *Economics*. New York: McGraw-Hill Book Company

Sarantakos, S. 1998. *Social Research*. MacMillan.

Sartorius K. and Botha G. 2008. "Black Economic Empowerment Ownership Initiatives: A Johannesburg Stock Exchange Perspective". *Development Southern Africa*. Vol. 25, No. 4.

Sasol Mining. 2010. *Annual Report*. Johannesburg.

Sasol Mining. 2011. *Annual Report*. Johannesburg.

Sasol Mining. 2012. *Annual Report*. Johannesburg

Saunders, M, Lewis, P and Thornhill, A. 2003. *Research Methods for Business Studies*. London: Prentice Hall

Saunders, R. "Painful Paradoxes: Mining, Crisis and Regional Capital in Zimbabwe". <http://www.africafiles.org/atissueezine.asap> Accessed 3 August 2012.

Save the Children. 2003. *Lifting the Resource Curse: Extractive Industry, Children and the Government*. London. Save the Children.

Schoeder, R. 2006. "South African Capital in the Land of Ujamaa: Contested Terrain in Tanzania". <http://www.africafiles.org/atissueezine.asap> Accessed 3 August 2012.

Segeant, B. 2006. *Brett Kebble: The Inside Story*. Zebra Press.

Seidman, A and Seidman, N. 1977. *US Multinationals in Southern Africa*. Dar Es Salaam, Tanzania Publishing House.

Shah, A.S.Z, Butt, A.S and Saeed, M.M. 2011. "Ownership Structure and Performance of Firms: Empirical Evidence from an Emerging Market". *African Journal of Business Management*. Vol. 5. 2

Shanduka Holdings. 2012. *Annual Report*. Johannesburg.

Schneider, B. R. 2008. "A Comparative Political Economy of Diversified Business Groups, or How States Organize Big Business". *Review of International Political Economy*. September 25.

Sibanda, A. 2014. "The Corporate Governance Perils of Zimbabwe's Indigenous Economic Empowerment Act 17 of 2007". *International Journal of Public Law and Policy*. Vol. 4, 1.

Sidripoulos. 1993. "Black Economic Empowerment". S.A. Institute of Race Relations Spotlight no. 2 September 1993.

Siegel, S. 2008. "BEE Finance Structures Influence Its Success". <http://www.bdfm.co.za>. Accessed 3 February, 2009

Simmer and Jack. 2011. *Annual Report*. Johannesburg.

Simpson, R.A. 2005. Government Intervention in the Malaysian Economy, 1970-1990: Lessons for South Africa. A Research Report in Partial Fulfilment of the Requirement for the Degree of Master in Public Administration, University of Western Cape.

South Africa Information. 2007. "SA's booming middle class". <http://www.southafrica.infor/about/people/blackdiamond-230507> Accessed 11 May 2008.

Simpson, R.A. 2005. 2008. "SA's dollar millionaires on the rise". <http://www.southafrica.info/business/success/world-wealth-2006.htm> Accessed 11 May 2008.

South African Institute of Race Relations. *South Africa Survey 2010/2011*. Johannesburg

Southall, R. 2005. "Black Empowerment and Corporate Capital". In *The State of the Nation, 2004-2005*. HSRC Press.

Southall, R. 2006a. "Black Economic Empowerment and Present Limits to a more Democratic Capitalism in South Africa". In *State of the Nation 2005-2006*. HSRC Press, Pretoria.

Southall, R. 2006b. "The Logic of Economic Empowerment". *Danish Institute for International Affairs, Working Paper* No. 2006/18.

Southall, R. 2007. "Ten Propositions about Black Economic Empowerment in South Africa". *Review of African Political Economy*. Vol. 34, 111.

Southall, R. 2012. "South Africa's Massacres: Peeling the Onion". *Open Democracy*. <http://www.opendemocracy.net>. Accessed 20/6/2013.

Southall, R. 2013. *Liberation Movements in Power: Party and State in Southern Africa*. University of Kwazulu Natal Press.

Sowel, T. 2004. *Affirmative Action around the World*. Donnelley and Sons.

Spiegel, S. J. 2015. "Shifting Formalization Policies and Recentralization: The Case of Zimbabwe's Artisanal Gold Mining Sector". *Society and Natural Resources: An International Journal*. Vol. 28, 5.

Statistics South Africa: *Annual Financial Statistics 2011*.

Stayn, B and Stainbank, L. 2013. "Separation of Ownership and Control in South Africa's Listed Companies". *South African Journal of Economics and Management*. Vol. 16, No. 3-316.

Stevens, P. 2003. "Resource Impact: Curse or Blessing? A Literature Survey". Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee.

Stiglitz, J. E. 1988. *Economics*. New York: W.W. Norton & Company

Stiglitz, J. E. 1988. 1993. *Economics*. New York: W.W. Norton & Company.

Stiglitz, J. E. 1988. 1996. *Economics*. New York: W.W. Norton & Company.

Stiglitz, J. E. 1988. 1998. *The Economics of the Public Sector*. London, Norton and Company.

Stiglitz, J. E. 1988. 2010. "Government Failure versus Market Failure: Principles of Regulation". In Edward J. Balleisen and David A Moss (eds.). *Government and Markets: Towards a Theory of Regulation*. Cambridge University Press.

Sunday Times. 26 June 2005.

Sunday Times. 2 July 2010

Sunday Times. 7 November 2010

Sunday Times. 17 March 2013

Sunday Times. 21 March 2013

Sunday Times. 12 December 2013.

Sunday Times. 22 December 2013.

Sundhir, A.1983. *Inequality and Poverty in Malaysia: Measurement and Decomposition*. Oxford University Press, New York.

Tangri, R. 1999. *The Politics of Patronage in Africa: Parastatals, Privatization and Private Enterprises*. Oxford. James S Curry Ltd.

- Tangri, R and Southall, R. 2008. "The Politics of Black Economic Empowerment in South Africa". *Journal of Southern African Studies*. Vol. 34, 3.
- Tanzi, Vito. 2011. *Government versus Markets: The Changing Economic Role of the State*. Cambridge University Press.
- Taylor, S.D. 2007. *Business and the State in Southern Africa: The Politics of Economic Reform*. Lynne Rienner Publishers.
- Thomason, R.F, Crosby, F.J. and Hersberger, S.D. 2001. *Affirmative Action: The Pros and Cons of Policy and Practice*. American University Press.
- Tiso Group News. Empowerment drives corporate activity in mining sector
- Todaro, Michael P. 1971. *Development Planning: Models and Methods*. Dar-Es-Salaam: Oxford University Press.
- Trans Hex. 2010. *Annual Report*. Johannesburg.
- Trans Hex. 2011. *Annual Report*. Johannesburg.
- Tshitekere, C. 2006. *Experience of Economic Redistribution: The Growth, Employment and Retribution Strategy in South Africa*. New York. Rutledge.
- Turok, B. 2008. *From the Freedom Charter to Polokwane: The Evolution of ANC Economic Policies*. Pambazuka Press.
- Uche, C. U. 2011. "British Government, British Businesses and Indigenisation Exercise in Nigeria". Paper presented at ECAS 4 Conference, 15-18 June.
- UCT, Unilever Institute. 2005. "Black Diamond Study 2005: South Africa's Booming Black Middle Class". <http://www.unileverinstitute.co.za/index.php>. Accessed 27 September, 2009.
- USA. 1961. Executive Order 10925. <http://www.archives.gov.edu>. Accessed 12 August, 2009
- USA. 1964. Civil Rights Act. . <http://www.archives.gov.edu>. Accessed 12 August, 2009
- USA. 1965. Executive Order 11246. . <http://www.archives.gov.edu>. Accessed 12 August, 2009
- USA. 1965. Small Business Act. <http://www.archives.gov.edu>. Accessed 12 August, 2009
- USA. 1971. Executive Order 11625. <http://www.archives.gov.edu>. Accessed 12 August, 2009

Van der Ploeg, F. 2007. "Africa and Natural Resources: Managing Natural Resources for Sustainable Growth". Paper Commissioned by the African Bank for the 2007 Annual Report.

Van der Zesthuisen J 2007. *Adapting to Globalization: Malaysia, South Africa and the Challenges of Ethnic Redistribution with Growth*. Westport CP, Praeger Publishers.

Vaughn, M and Ryan, L.V. 2006. "Corporate Governance in South Africa: A Bellwether for the Continent". *Corporate Governance: An International Review*. Vol. 14, No. 5.

Village Main Reef Gold. 2011. *Annual Report*. Johannesburg.

Village Main Reef Gold. 2012. *Annual Report*. Johannesburg.

Virtual Metals Research and Consulting. 2006. *Gold in South Africa*.

Visagie, J. 2013. "Who are the Middle Class in South Africa? Does it Matter for Policy?" <http://www.econ3x3.org/article>. Accessed 30/6/2015.

Von Misses, Ludwig .Ed. 1998. *Interventionism: An economic Analysis*. Edited by Bettina Bien Grieve. The Foundation of Economic Education Inc. Irviton -011-Hudson, New York 10533.

Wade, R. 2004. *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization*. Princeton and Oxford, Princeton University Press.

Welch, C., Marschan, P. R., Penttinen, H. and Marja, T. 2002. "Corporate Elites as Informants in Qualitative International Research". *International Business Review*, Vol.11.

Wescoal. 2011. *Annual Report*. Johannesburg.

Wesizwe Platinum. 2008. *Annual Report*. Johannesburg.

Wesizwe Platinum. 2010. *Annual Report*. Johannesburg.

Wesizwe Platinum. 2011. *Annual Report*. Johannesburg.

Wesizwe Platinum. 2012. *Annual Report*. Johannesburg.

West, A. 2006. "Theorizing South Africa's Corporate Governance". *Journal of Business Ethics*. Vol. 68.

Wick, K and Bulte, H. E. 2006. "Contesting Resources – Rent Seeking: Conflict and Natural Resource Curse". *Public Choice*. No. 128.

Williams, P and Taylor T. 2000. "New liberalism and the Political Economy of the "New" South Africa". *New Political Economy*. Vol.5.1.

Wilson, G. K. 1994. *Business and Politics: A Comparative Introduction*. Houndmills: MacMillan.

Wilson III, E.J 1990. "Strategies of State Control of the Economy: Nationalization and Indigenization in Africa". *Comparative Politics*. Vol. 22, No. 4:401-419.

Witwatersrand Consolidated Gold Resources. 2011. *Annual Report*. Johannesburg.

Witwatersrand Consolidated Gold Resources. 2012. *Annual Report*. Johannesburg.

World Bank. 1993. *East Asian Miracle: Economic Growth and Public Policy*. NY. Oxford University Press.

Xstrata. 2009. *Annual Report*. Johannesburg.

Xstrata. 2010. *Annual Report*. Johannesburg.

Xstrata. 2011. *Annual Report*. Johannesburg.

Yu, F. F. 1997. "Entrepreneurial State: The Role of Government in the Economic Development of the Asian Newly Industrialising Economies". *Development Policy Review*. Vol. 15.

Zhuwakinyu, M. 2004. "Dilution Dilemma: Government silent on whether latest phase of empowerment will meet its target".

<http://www.southafrica.infor/about/people/blackdiamond-230507>. Accessed 30 October 2007.

10 Appendices

10.1 Amended Score Card for South Africa's Mining Industry

ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weightin	
				2010	2011	2012	2013	2014		
1	Reporting	Has the company reported the level of compliance with the Charter for the Calendar year	Documentary proof of receipt from the department	Annually	March 2011	March 2012	March 2013	March 2014	March 2015	Y/N
2	Ownership	Minimum target for effective HDSA ownership	Meaningful economic participation	26%	15%	➡			26%	Y/N
		Full shareholder rights		26%	15%	➡			26%	
3	Housing and living conditions	Conversion and upgrading of hostels to attain the occupancy rate of one person per room.	Percentage reduction of occupancy rate towards 2014 target.	Occupancy rate of one person per room	Base-line	25%	50%	75%	100%	Y/N
		Conversion and upgrading of hostels into family units	Percentage conversion of hostels into family units	Family units established	Base-line	25%	50%	75%	100%	
4	Procurement & Enterprise Development	Procurement spent from BEE entity	Capital goods	40%	5%	10%	20%	30%	40%	5%
			Services	70%	30%	40%	50%	60%	70%	5%
			Consumable goods	50%	10%	15%	25%	40%	50%	2%
		Multinational suppliers contribution to the social fund	Annual spend on procurement from multinational suppliers	0.5% of procurement value	0.50%	0.50%	0.50%	0.50%	0.50%	3%
5	Employment Equity	Diversification of the workplace to reflect the country's demographics to attain competitiveness.	Top Management (Board)	40%	20%	25%	30%	35%	40%	3%
			Senior Management (Exco)	40%	20%	25%	30%	35%	40%	4%
			Middle Management	40%	30%	35%	40%	40%	40%	3%
			Junior Management	40%	40%	40%	40%	40%	40%	1%
			Core Skills	40%	15%	20%	30%	35%	40%	5%
6	Human Resource Development	Development of requisite skills, incl. support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation	HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy)	5%	3%	3.5%	4.0%	4.5%	5.0%	25%
7	Mine community development	Conduct ethnographic community consultative and collaborative processes to delineate community needs analysis	Implement approved community projects	Up-to-date project implementation	Implementation of projects will serve to enhance relationships amongst stakeholders leading to communities owing patronage to projects.					15%
8	Sustainable development & growth	Improvement of the industry's environmental management	Implementation of approved EMPs.	100%	Annual progress achieved against approved EMPs.					12%
		Improvement of the industry's mine health and safety performance	Implementation of the tripartite action plan on health and safety	100%	Annual progress achieved against commitments in the tripartite action plan on health and safety.					12%
		Utilisation of South African based research facilities for analysis of samples across the mining value	Percentage of samples in South African facilities	100%	establish baseline	25%	50%	75%	100%	5%
9	Beneficiation	Contribution of a mining company towards beneficiation (this measure is effective from 2012)	Additional production volume contributory to local value addition beyond the base-line	Section 26 of the MPRDA (percentage above baseline)	The beneficiation strategy and its modalities of implementation outline the beneficiation requirements per commodity extracted in South Africa.					-
TOTAL SCORE										100

Y/N applies to pillars that are ring-fenced.

Legend	0-25% (Gross non-compliance)
	25-50% (Non-compliance)
	50-75% (Marginal to acceptable performance)
	75-100% (Excellent performance)

Source: DMR 2010i:

10.2 Score Card for South Africa's Mining Industry

ANNEXURE A: SCORECARD FOR THE BROAD BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

NOTES	DESCRIPTION	5 YEAR TARGET			10 YEAR TARGET
1	Human Resource Development				
	• Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?	Yes	No		
	• Has the company implemented career paths for HDSA employees including skills development plans?	Yes	No		
	• Has the company developed systems through which empowerment groups can be mentored?	Yes	No		
2	Employment Equity				
	• Has the company published its employment equity plan and reported on its annual progress in meeting that plan?	Yes	No		
	• Has the company established a plan to achieve a target for HDSA participation in management of 40% within five years and is implementing the plan?				
	• Has the company identified a talent pool and is it fast tracking it?	Yes	No		
	• Has the company established a plan to achieve the target for women participation in mining of 10% within the five years and is implementing the plan?				
3	Migrant Labour				
	• Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?	Yes	No		
4	Mine community and rural development.				
	• Has the company co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditures and show a plan).	Yes	No		
5	Housing and Living Conditions				
	• For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?	Yes	No		
	• For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?	Yes	No		
6	Procurement				
	• Has the mining company given HDSA's preferred supplier status?	Yes	No		
	• Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	Yes	No		
	• Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 – 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes	No		
7	Ownership & Joint Ventures				
	• Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5-years and 26 percent in 10-years?			15%	26%
8	Beneficiation				
	• Has the mining company identified its current level of beneficiation?	Yes	No		
	• Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	Yes	No		
9	Reporting				
	• Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	Yes	No		

10.3 Generic Score Card: Elements and Weightings Points

	Element	Indicator:	Weighing	Code
1	Direct Empowerment: divided into 2			
a)	Equity ownership	% share of economic benefits	(20%)	100
(b)	Management control	% black persons in executive management and executive board and board committees	(10%)	200
2	Human resource development: divided 2			
(a)	Employment equity	Weighted employment equity analysis	(15%)	300
(b)	skills development	Skills development expenditure as proportion of total payroll	(15%)	400
3	Indirect Empowerment : Divided into 2			
(a)	Preferential affirmative procurement	Procurement from black-owned and empowered enterprises as a proportion of total procurement	20%)	500
(b)	Enterprise development	Investment in black-owned and empowered enterprises as a portion of total assets	(15%)	600
4	Residual ¹⁰⁰	To be determined by a sector or enterprise based on Social-economic development initiatives	5%	700
	Total		100%	

Source: Balshaw and Goldberg: 2008 (pp54)

¹⁰⁰ The residual element is to be calculated on the basis of whether the enterprise adheres to enterprise development (engagement in beneficiation), corporate social investment, labour-intensive production and construction methods, and investment in social wages of its employees (by providing housing, transport, health care etc.). This means the 10 per-cent score is left to the economic sectors themselves to decide on how it can best be used.

10.4 Questionnaire to the DMR Officials

Name and designation

--

INFORMATION CONCERNING LICENSING

1 Is it possible from your records to know how many licenses in various categories have been issued since 2004 to white companies, foreign companies and HDSA companies)?

Licenses	White Companies	Foreign companies	HDSA Companies
Prospecting			
Exploration			
Mining			
Others			

1.1 Have the licenses to all new companies been issued on the basis of HDSA partnership?

--

1.2 Are there cases where HDSA/ white / foreign applicants have been denied licensing? In such cases what have been the major reasons for refusal?

HDSA Company affected

Reasons

White-owned Companies

Reasons

Foreign-owned Company Affected

Reasons

1.3 What are common problems that arise at the licensing stage and what measures are taken to rectify them?

Problem

Measures

Problem

Measures

1.4 There have been complaints of black partners selling their prospecting\exploration licenses to white companies instead of actually participating in exploration or extraction. How true are these allegations and what actions have been taken?

--

2 How does the DMR or any other government institution that you are aware of help HDSA companies in:

2.1 Accessing land where mineral deposits are

2.2 Accessing exploration information

2.3 Getting black or white or foreign partners to enter into BEE partnership

2.4 Solving any other problems (e.g., community-relocation) etc.

Compliance with the Mining Charter

3 Several studies including the one done by your office indicated that compliance of the ownership element of the Mining Charter stands at around 8 to 9 per cent. But the Chamber of Mines CEO Mr Bheki in his presentation to Parliament in September 2011 indicated that they had reached 15 per cent or more equity transfer as far back as 2009 and some had even surpassed the 26 per cent equity level.

What brings the disparity on compliance levels reported?

3.2 What do you attribute the low compliance in general?

3.3 What do you attribute to the low compliance in Management and Control?

3.4 There are also low compliance levels for women. What are the major reasons for that?

3.5 What measures have been put in place to enforce more compliance?

3.6 What will the government do if the 26 per cent black ownership by 2014 is not been achieved?

4 HDSA companies are facing a problem of lack of finance for both buying equity and daily operational functions. Others are struggling with debts and even collapsing.

4.1 What programmes has the government put in place to help HDSA companies with finance?

4.2 Have the mining companies fulfilled their R100 billion pledges made in 2002 when signing the Mining Charter? If not what steps have been taken?

5 Most studies reveal that the DMR lacks the capacity to oversee the BEE implementation process. Please share with us your experiences on the issue.

- 6 What are other general burning issues concerning BEE policy and its implementation in the mining industry that you would like to share with us?

--

10.5 Questionnaire to Executives of White and Foreign-owned Companies

General Company Information

- 1 Name and Address of Company

--

- 2 Ownership profile of the company

2.1	Major/White-owned mining company	Foreign-owned Company
-----	----------------------------------	-----------------------

- 2.2 Type of company (e.g., mining investment, exploration, extraction, and marketing)

--

- 2.3 Sectors that you operate in or invest in

PGM	Diamond	Gold	Coal	Ferrous	Non-Ferrous	Sand and Aggregate
-----	---------	------	------	---------	-------------	--------------------

INFORMATION ON LICENSING

- 4 Complying with the MPRDA Act meant converting your old-order right licenses to new-order rights and getting a BEE partner.

- 4.1 Have you converted all your old order right licenses to new order rights of the type below?

Prospecting	Quantity
Exploration	Quantity
Mining	Quantity
Others	Quantity

- 4.2 Have you obtained other new licenses post the Act (after 2002) of the type below?

Prospecting	Quantity
Exploration	Quantity
Mining	Quantity
Others	Quantity

- 5 Please share with us difficulties if any you experienced in obtaining any kind of licenses and suggestions that you think will work to alleviate such problems

--

BEE PARTNERSHIP

- 6 Getting a BEE partner was a requirement in getting licenses

- 6.1 Did you have to get a HDSA partner for each operation that you applied for mining rights?

--

6.2 What attracted you in the choice of the partners you have? (empowered/black businesses, black junior miners, communities and (ESSOPs)

6.3 Please share with us any problems you are experiencing in getting and entering into BEE partnerships

IMPLEMENTATION

7 Please list all your BEE partners and consortiums indicating percentage of shareholding that you own and that you offered to your partners.

Name of BEE Partner	Type of Partnership (e.g., ESOP, Community, consortium, black junior or major miner)	Percentage shareholding

8 Low compliance of major mining companies on equity ownership, management and control is one of issues widely discussed in the media.

8.1 Has your company complied with the 15 per cent HDSA ownership by 2009?

8.2 What method did you use to calculate the equity compliance you transferred to HDSAs?

8.3 Are you likely to meet the 26 per cent target of HDSA ownership by 2014?

8.4 Have you reached your MANAGEMENT and CONTROL compliance targets?

8.5 Please share with us those factors that you think have positively influenced your success in reaching your compliance targets (equity and management control).

8.6 If you have NOT reached your EQUITY compliance targets, what problems have contributed to this?

8.7 If you have not reached your MANAGEMENT and CONTROL compliance targets, what problems have contributed to NOT reaching your targets?

8.8 In general what problems do you face in being in partnership with HDSA partners either as shareholders, partners in extractive activities or managers?

FINANCING OF BEE PARTNERS

9 The capital intensity in mining raises the issues of financial capacity for both buying equity and cover for daily operational costs. The problem is much worse for HDSA partners that some are being liquidated.

9.1 What are the major sources of finance?

--

9.2 Did you directly provide finance for your BEE partners-to buy equity or to cover for operation costs? Please give us an approximate amount.

Equity	Operations
--------	------------

9.3 Were you involved in guaranteeing loan(s) for HDSA companies?

--

9.4 Were you involved in organizing for other funders for your HDSA partners?

--

9.5 Did you offer any other –financial assistance to HDSA companies?

--

9.6 What conditions did you attach to the financial support to your BEE partner(s)?

--

9.7 Have you lost any partner (s) because of debts or any other reason?

--

9.8 How has lack of finance by HDSA affected your partnerships in general?

--

GOVERNMENT ROLE

10 How has the government been assisting you in matters of BEE partnership?

--

11 What do you think the government's role should be in helping the mining companies and in particular HDSA companies?

--

12. What aspects of the following policies have helped or constrained your company. Please explain in what ways:

12.1 MPRDA

--

12.2 The Mining Charter

--

12.3 The Generic Codes of Good Practice

--

12.4 The Mining Codes of Good Practice-

--

The Future

13. What do you expect to happen to the existing HDSA partnership agreements and deals you are engaged in after 2014

--

15. What are other burning issues in general related to the new regulatory frame-work as whole (B-BBEE, the MPRDA and Mining Charter) and its implementation that you would like to share with us?

--

10.6 Questionnaire to Executives of BEE Companies

General Company Information

1 Name and Address of Company

1.1 Type of Company (e.g., HOLDCO)

1.2 Major activities (e.g., exploration, extraction, marketing)

1.3 Sub-sectors that you are operating in (e.g., PGM, gold, coal, etc.

PGM	Diamond	Gold	Coal	Ferrous	Non-Fe	Sand and Ag
-----	---------	------	------	---------	--------	-------------

INFORMATION ON LICENSING

2 What kind of licenses do you hold?

Prospecting	Quantity
Exploration	Quantity
Mining	Quantity
Others	Quantity

3 Explain the nature of problems (if any) that you encountered in obtaining each kind of licenses above

4 Please share with us your experiences with regard to the following issues:

4.1 Access to land

4.2 Access to exploration information

4.3 Other issues related to minerals

Partnership

5 Please name your partners and the nature of partnership in the following category

5.1 Major/White-owned mining company partner(s)

5.2 Foreign-owned mining company partner

5.3 Other black-owned mining partners

5.4 Other black woman owned mining company partner

6 What attracted you in the choice of the partners you have in the following categories?

6.1 Foreign-owned mining company partner

6.2 Local Major/White Partner

6.3 Other black-owned mining company partner

6.4 Other partners (e.g., Community, and ESOP)

7 Please share with us any problems you are experiencing in getting and entering into partnership with the following category of partners

7.1 Major/Local white companies

7.2 Foreign companies

7.3 Other black companies

7.4 Women companies

7.5 Other problems in general

Implementation

8 Please share with us your experiences in concluding deals with regard to:

8.1 The role you played (i.e. steps you took to initiate the deal)

8.2 Roles played by different categories of your partners?

8.3 Roles played by government institution(s)

8.4 Roles played by financial institution

8.5 Roles played by other parties which you know

9 How do you participate in the partnership that you are engaged in?

9.1 board membership

9.2 Executive management

9.3 Other roles

FINANCING

10 The capital intensity in mining raises the issues of financial capacity for both buying equity and cover for daily operational costs.

10.1 What are your major sources of finance?

11 What funding assistance did you receive from the following? Please indicate an average amount and their names.

11.1 Local white partner(s)?

11.2 Foreign Partners

11.3 Local financial institution

11.4 Foreign financial institution

11.5 Government institution

12 Were there any funding conditions attached to the deals? If so please explain

13 Some HDSA companies are facing heavy debts to an extent that some are facing liquidation.

13.1 If any, on average how much debt do you have in the BEE mining deals you are engaged in and with whom?

13.2 Have you lost any mining shareholding or failed to conclude deals due to debts

13.3 In general, how has lack of finance affected your equity ownership and the attaining of control in your BEE deals?

GOVERNMENT'S ROLE

14 How has the government (of South Africa or any of its government Department) been assisting you get a BEE partner or any matters of partnership?

15 What do you think the government's role should be in helping the mining companies and in particular HDSA companies?

16. What aspects of the following policies have helped or constrained your company. Please explain in what ways:

16.1 MPRDA

16.2 The Mining Charter

16.3 The Generic Codes of Good Practice

16.4 The Mining Codes of Good Practice-

THE FUTURE

17 What do you expect to happen to the existing HDSA partnership agreements and deals you are engaged in after 2014

18. What are other burning issues related to the new regulatory frame-work as whole (B-BBEE, the MPRDA and Mining Charter) and the implementation in general that you would like to change? Please share with us.

10.7 A Sample of Companies Used in the Study and Interviewees

	Name of the Company	Criteria for Choice	Person Interviewed	Date Interviewed
1	BHP Billiton Plc.	F, JSE	Mr Mahomed Sadat- Chief Operations Office SA	16/8/2010
2	Anglo American Plc.	F, JSE	Mr Godfrey Gomwe - Executive Director	20/9/2010
			Mr Chris Griffith Executive Director	27/9/2010
3	Kumba Iron Ore Ltd	F, JSE		Not Accessed
4	Anglo American Platinum Ltd	F, JSE		Not Accessed
5	Anglo Gold Ashanti Ltd	F, JSE	Mr Mark Cutifani-CEO	5/11/2010
6	Impala Platinum	W, JSE	Paul Dune Executive Director-SA	15/10/2010
7	Gold Fields SA	W, JSE	Mr NJ Holland –CEO	19/11/2010
			Mr Peter Turner Ex VP-SA	12/11/2010
8	Exxaro Resources Ltd	BEE, JSE	Sipho Nkosi- CEO	14/10/2011
9	African Rainbow Minerals Ltd	BEE, JSE	Mr Andre Wilkens-CEO	22/11/2010
			Mr Mangisi Gule-CEO ARM Coal	12/9/2011
			Mr Steven Mashalane CEO ARM Platinum	30/9/2011
10	Harmony Gold Mining	W, JSE	Mr Graham Briggs	7/6/2011
			Mr H E Masheo-Masheo –Transformation Director	13/6/2011
11	Assore	W, JSE	Mr SJ Cory-CEO	19/8/2011
12	Lonmin plc	F, JSE	Mr Ian Farmer-CEO	27/8/2011
13	Uranium One Inc	F, JSE		Not Accessed
14	Aquarius Platinum	F, JSE	Mr Mkululi Dube-Director Human Resources	22/8/2010
15	Northam Platinum	BEE, JSE	Mr G F Lewis-CEO	15/10/2010
16	Royal Bafokeng Resources	BEE, JSE		Not Accessed
17	Metorex Ltd	F, JSE		Not Accessed
18	Optimum Coal Holdings Ltd	BEE, JSE		Not Accessed
19	Palaborwa Mining Corporation	F, JSE		Not Accessed
20	Great Basin Gold	F, JSE		Not Accessed
21	Eastern Platinum Ltd	F, JSE		Not Accessed
22	Coal of Africa Ltd	F, JSE		Not Accessed
23	Evraz Highveld Steel	F, JSE		Not Accessed
24	Platmin Ltd	F, JSE		Not Accessed
25	Wesizwe Platinum	BEE, JSE	Mr AB Mashiatsihidi- CEO	28/10/2011
			Mr Jack de Vert-Director Finance	31/10/2011
26	Gold One International Ltd	F, JSE		Not Accessed
27	Merafe Resources Ltd	BEE, JSE		Not Accessed
28	Pan African Resources	F, JSE	Mr Johan Nelson-CEO	12/8/2011
29	Petmin Ltd	F, JSE		Not Accessed
30	Sentula Mining	W, JSE		Not Accessed
31	DRDGOLD Ltd	F, JSE		Not Accessed
32	Witwatersrand Consolidated Gold	W, JSE		Not Accessed
33	Village Main Reef Ltd	W, JSE		Not Accessed
34	First Uranium Corp	F, JSE		Not Accessed
35	Anoorag Resources Corporation	BEE, JSE	Mr Harold Motaung-CEO	4/11/2011
36	Infrassors Holdings Ltd	W, JSE		Not Accessed
37	Jubilee Platinum Plc	F, JSE		Not Accessed
38	Keaton Energy Holdings Ltd	W, JSE		Not Accessed

39	ZCI Ltd	F, JSE		Not Accessed
40	Sephaku Holdings Ltd	BEE, JSE	Mr N C Lazarus CEO	17/6/2011
41	Firestone Energy	W, JSE		Not Accessed
42	Hwange Colliery Company Ltd	F, JSE		Not Accessed
43	Trans Hex Group Ltd	W, JSE		Not Accessed
44	Tawana Resources NL	F,JSE		Not Accessed
45	RandGold & Exploration Co Ltd	W, JSE		Not Accessed
46	Bauba Platinum Ltd	W, JSE		Not Accessed
47	Miranda Mineral Holdings Ltd	W, JSE,		Not Accessed
48	Delrand Resources Ltd	W, JSE		Not Accessed
49	Wescoal Holdings Ltd	W, JSE		Not Accessed
50	Goliath Gold Mining Ltd	W, JSE		Not Accessed
51	Rockwell Diamonds Inc	F, JSE		Not Accessed
52	Sallies Ltd	W, JSE		Not Accessed
53	Central Rand Gold Ltd	F, JSE		Not Accessed
54	Platfields Ltd	F, JSE		Not Accessed
55	South African Coal Mining	BEE, JSE		Not Accessed
56	Simmer and Jack Mines Ltd	W, JSE		Not Accessed
57	Xstrata Plc	F, Non-JSE		Not Accessed
58	De Beers Consolidated Mines.	F, Non-JSE		Not Accessed
59	Petrus Diamonds	F, Non-JSE	Mr Johan Dippenaar –CEO	24/6/2011
60	Richards Bay Minerals	F, Non-JSE	Ms Elane Dorward –King Managing Director	11/7/2011
			Jabu Khubela -General Manager Corporate Relations	12/7/2011
61	Total Coal Africa	F, Non-JSE	Ms Juanita Meijssen –CEO	14/6/2011
62	Mvelapanda Holdings	BEE, Non-JSE	Mr Sipho Mofokeng-CEO	6/6/2011
63	Sedibeng Mining	BEE, Non-JSE	Mr Clyde Johnson-CEO	10/10/2011
64	Mmakau Mining	BEE, Non-JSE	Mr Carl Kekana-CEO	16/10/2011
65	Motjoli Resources	BEE, Non-JSE	Mr Nchaka Moloi-CEO	20/6/2011
			Ms Nonkubela Mazwai-Co Founder	23/6/2011
66	African Spirit Holdings	BEE Non-JSE	Respondent –Name withheld	5/7/2011
67	Gubevu Platinum	BEE, Non-JSE		Not Accessed
68	BSC Resources	BEE, Non-JSE	Mr Bongani Mashishu-CEO	15/7/2011
69	Shanduka Resources	BEE, Non-JSE	Rowan Smith-Managing Director	8/8/2011
70	Panohalo Holding	BEE, Non-JSE		Not Accessed
71	Ngazana Consortium	BEE, Non-JSE		Not Accessed
72	Moepi Group	BEE, Non-JSE		Not Accessed
73	DTI		Paul Radebe- BEE Unit	4/9/2009
74	DME		Tshepo Tladi	18/9/2009
			Special Studies- (name withheld)	28/9/2009
			A Magomezulu-Dep-Director Mineral Policy	28/9/2009
75	DMR		Tshepo Tladi	9/11/2011
			Direct Special Studies (name withheld)	9/11/2011
	Informal Interview			
1	University of Pretoria	Academic	Mr Clive Knobe-, Lecturer	16/9/2009
2	University of Pretoria	Academic	Prof (Emeritus)-Gerald Dekker	7/9/2011
3	Investec	Academic	Prof Brian Kantor	2/8/2012

4	AngloGold Ashanti-		Robert Louis-Head of Tautomer Mine	26/9/2009
5			President –SAWEMA	7/9/2010
	Anglo American former Engineer		Carl de Jaeger	6/11/2015
6	Independent Researcher and		Paul Jourdan	7/9/2010
			Women Mining Group-Limpopo(name withheld	11/11/2011
			Director of a Mining Company (Name Withheld)	11/11/2011

10.8 JSE Mining Companies: Market Capitalisation

JSE MINING COMPANIES				
Number	Company	Market Cap (12-July 2011)	Percentage	Cumulative Percentage
1	BHP Billiton Plc	R556 865.00	28.58%	28.58%
2	Anglo American plc	R445 035.00	22.84%	51.42%
3	Kumba Iron Ore Ltd	R162 958.00	8.36%	59.79%
4	Anglo American Platinum Ltd	R158 111.00	8.11%	67.90%
5	AngloGold Ashanti Ltd	R109 320.00	5.61%	73.51%
6	Impala Platinum Holdings Ltd	R108 528.00	5.57%	79.08%
7	Gold Fields Ltd	R71 611.00	3.68%	82.76%
8	Exxaro Resources Ltd	R64 000.00	3.28%	86.04%
9	African Rainbow Minerals Ltd	R40 173.00	2.06%	88.10%
10	Harmony Gold Mining Company Ltd	R38 381.00	1.97%	90.07%
11	Assore Ltd	R31 326.00	1.61%	91.68%
12	Lonmin plc	R30 545.00	1.57%	93.25%
13	Uranium One Inc	R19 345.00	0.99%	94.24%
14	Aquarius Platinum Ltd	R15 736.00	0.81%	95.05%
15	Northam Platinum Ltd	R15 109.00	0.78%	95.83%
16	Royal Bafokeng Platinum Ltd	R10 254.00	0.53%	96.35%
17	Metorex Ltd	R8 436.00	0.43%	96.78%
18	Optimum Coal Holdings Ltd	R6 672.00	0.34%	97.13%
19	Palabora Mining Company Ltd	R6 241.00	0.32%	97.45%
20	Great Basin Gold Ltd	R6 146.00	0.32%	97.76%
21	Eastern Platinum Ltd	R5 413.00	0.28%	98.04%
22	Coal of Africa Ltd	R4 780.00	0.25%	98.29%
23	Evraz Highveld Steel and Vanadium Ltd	R4 759.00	0.24%	98.53%
24	Platmin Ltd	R3 605.00	0.19%	98.72%
25	Wesizwe Platinum Ltd	R3 060.00	0.16%	98.87%
26	Gold One International Ltd	R2 968.00	0.15%	99.02%
27	Merafe Resources Ltd	R2 848.00	0.15%	99.17%
28	Pan African Resources PLC	R2 016.00	0.10%	99.27%
29	Petmin Ltd	R1 788.00	0.09%	99.37%
30	Sentula Mining Ltd	R1 537.00	0.08%	99.44%
31	DRDGOLD Ltd	R1 309.00	0.07%	99.51%
32	Witwatersrand Consolidated Gold Resources Ltd	R1 293.00	0.07%	99.58%
33	Village Main Reef Ltd	R1 118.00	0.06%	99.64%
34	First Uranium Corporation	R856.00	0.04%	99.68%
35	Anoorag Resources Corporation	R831.00	0.04%	99.72%

36	Infrasors Holdings Ltd	R605.00	0.03%	99.75%
37	Jubilee Platinum Plc	R590.00	0.03%	99.78%
38	Keaton Energy Holdings Ltd	R530.00	0.03%	99.81%
39	ZCI Ltd	R529.00	0.03%	99.84%
40	Sephaku Holdings Ltd	R508.00	0.03%	99.86%
41	Firestone Energy Ltd	R378.00	0.02%	99.88%
42	Hwange Colliery Company Ltd	R360.00	0.02%	99.90%
43	Trans Hex Group Ltd	R339.00	0.02%	99.92%
44	Tawana Resources NL	R257.00	0.01%	99.93%
45	Randgold & Exploration Co Ltd	R184.00	0.01%	99.94%
46	Bauba Platinum Ltd	R169.00	0.01%	99.95%
47	Miranda Mineral Holdings Ltd	R137.00	0.01%	99.96%
48	Delrand Resources Ltd	R130.00	0.01%	99.96%
49	Wescoal Holdings Ltd	R127.00	0.01%	99.97%
50	Goliath Gold Mining Ltd	R115.00	0.01%	99.98%
51	Rockwell Diamonds Inc	R99.00	0.01%	99.98%
52	Sallies Ltd	R94.00	0.00%	99.99%
53	Central Rand Gold Ltd	R93.00	0.00%	99.99%
54	Platfields Ltd	R71.00	0.00%	100.00%
55	South African Coal Mining Holdings Ltd	R54.00	0.00%	100.00%
56	Simmer and Jack Mines Ltd	R38.00	0.00%	100.00%
	Total	R1 948 380.00	100.00%	200.00%